FEDERAL BUREAU OF INVESTIGATION
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AIRTEL

12/2/88

TO: DIRECTOR, FBI
(Attn: Public Corruption Unit, White Collar Crime Section, Criminal Investigative Division; Special Inquiry Unit, Civil Rights and Special Inquiry Section, Criminal Investigative Division)

FROM: SAC, WASHINGTON METROPOLITAN FIELD OFFICE
(74-330) (P) (C-2)

SUBJECT: [redacted] b6 b7C
Possible Perjury;
(OO:WMFO)

Re WMFO teletype to Director, 10/7/88.

For the information of the Bureau and New York, on 11/10/88, an extensive conference was held between Washington Metropolitan Field Office (WMFO) Case Agent and [redacted] Public Integrity Section, Criminal Division, DEPARTMENT OF JUSTICE. b6 b7C The allegations against the three subjects were reviewed at length and in detail, and the investigation to date was discussed. [redacted] advised Case Agent that in light of subjects [redacted] having

4-Bureau
2-New York (C-12)
4-WMFO
(2-74-330) (C-2)
(2-161A-20677) (A-1)
[redacted]
(10)

b6 b7C

74-330-3312

SEARCHED [redacted] INDEXED
SERIALIZED [redacted] FILED
DEC 6 1988
FBI - WASHINGTON FIELD
[redacted]

submitted to FEDERAL BUREAU OF INVESTIGATION (FBI) interview, he contacted [redacted] acting as attorney for [redacted] requested that [redacted] make his client available for FBI interview. [redacted] advised [redacted] that his client would only submit to FBI interview if he were granted immunity from prosecution. [redacted] stated that this was not feasible, and [redacted] accordingly advised that his client declined to be interviewed. b6 b7C

In view of the above, and the fact that there is no evidence to indicate a criminal conspiracy or that gives rise to a prosecutable offense, [redacted] advised that he would therefore recommend to the Chief, Public Integrity Section, that this case be declined for prosecution. b6 b7C

Accordingly, [redacted] has requested of Case Agent that a detailed LHM be submitted to the Public Integrity Section, chronicling the investigation to date. [redacted] will then present that to the Chief, Public Integrity Section to obtain a declination.

LEAD:

WASHINGTON METROPOLITAN FIELD OFFICE DIVISION:

AT WASHINGTON, D.C:

Will prepare a closing LHM and submit copies to Public Integrity Section and FBIHQ.

FD-36 (Rev. 8-29-85)

FBI

TRANSMIT VIA:
☐ Teletype
☐ Facsimile
☒ AIRTEL

PRECEDENCE:
☐ Immediate
☐ Priority
☐ Routine

CLASSIFICATION:
☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ UNCLAS E F T O
☐ UNCLAS

Date 4/24/89

TO : DIRECTOR, FBI
ATTN: PUBLIC CORRUPTION UNIT, WCC

FROM : SAC, WMFO (74-330) (P)

[redacted] b6 b7C

POSSIBLE PERJURY
OO: WMFO

Enclosed for FBIHQ is the original and four copies of an LHM regarding the captioned matter. Also enclosed for New York are two copies of the LHM.

Two copies of this LHM have been disseminated under separate cover to the DOJ Public Integrity Section.

The delay in submission of this LHM has been caused by the preparation time and the fact that the case agent was assigned as case agent to a major WMFO Fraud matter captioned [redacted] WF 46A-11469. b7E

LEAD:

WMFO

Will make recontact with Public Integrity Section Attorney [redacted] to determine the final prosecutive opinion of the Chief of the Public Integrity Section.

[redacted] b6 b7C

3- Bureau (Enc. 5)
1- New York (Enc. 2)
4- WMFO (2- 74-330) (C-2)
(2-161A-20677) (A-1)
[redacted]
([redacted])

74-330-34

SEARCHED [redacted] EXED
SERIALIZED [redacted] ED

APR 27 1989

Approved: _____ Transmitted _____ Per _____
(Number) (Time)

U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to
File No. WMFO 74-330

Washington Metropolitan Field Office

[redacted] b6 b7C

POSSIBLE PERJURY

I. PREDICATION

The predication for this investigation was a complaint made by attorneys for INSLAW, INC., a former contractor for the Department of Justice (DOJ), to the Department of Justice Public Integrity Section, on or about February 26, 1988. The complaint alleged that former [redacted] and former [redacted] perjured themselves in testimony regarding bankruptcy proceedings involving INSLAW, and that subsequently [redacted] suborned [redacted] perjury. Central to the allegations are deposition and/or trial testimony on two matters: 1) Whether [redacted] pressured [redacted] to convert the INSLAW bankruptcy from a chapter 11 (reorganization) to a chapter 7 (liquidation) case; and 2) Whether [redacted] pressured [redacted] to send his [redacted] from New York to Washington, D.C. to work on the INSLAW case. b6 b7C

On May 2, 1988, Acting Assistant Attorney General (AAAG) John C. Keeney, Criminal Division, requested that the Federal Bureau of Investigation (FBI) open a criminal investigation on the allegations. On May 17, 1988, the facts of the case were discussed generally between Public Integrity Section Attorney [redacted] and FBI Special Agent (SA) [redacted]

On August 18, 1988, this case was further discussed between Public Integrity Section Attorney [redacted] and FBI SA [redacted] In addition to going forward with the perjury investigation of [redacted] b6 b7C

2-Public Integrity Section
Attn: [redacted]
5-Bureau
Attn: Public Corruption Unit
2-New York (C-14)
4-WMFO
(2-74-330) (C-2)
(2-161A-20677) (A-1)

[redacted]
(13) [redacted] b6 b7C

requested that the investigation also focus on the testimony of [redacted] who has previously testified that he fabricated information about a conspiracy to injury INSLAW. However, he has subsequently recanted and made out of court allegations, as has his attorney, that there was a conspiracy to liquidate or otherwise injure INSLAW. b6 b7C

On November 10, 1988, a detailed oral presentation of this case was made to [redacted] In sum, although there are areas of conflicting testimony by the subjects, [redacted] advised that there is insufficient predication upon which to continue this crminial investigation and contemplate the filing of federal criminal charges. Therefore, [redacted] requested that the FBI discontinue its investigation of this matter. In addition because this case has had widespread publicity and is the subject of both continuing litigation and a Senate subcommittee investigation, [redacted] further requested that the FBI write a detailed memorandum summarizing the relevant testimony and statements. b6 b7C

Thereafter, [redacted] stated he will present this case to the Chief Public Integrity Section, and recommend a declination. b6 b7C

This memorandum summarizes the pertinent testimony and interviews of [redacted] It also summarizes interviews of other persons knowledeable of the facts giving rise to this case.

II. BACKGROUND

In 1973, [redacted] a non-profit corporation, The Institute For Social Research (Institute). From 1973-1980, the Institute received grants from the Law Enforcement Assistance Administration (LEAA) to conduct institutional research and computer software development. In 1981, faced with the disestablishment of the LEAA, [redacted] the institute to a for-profit company, INSLAW, INC. b6 b7C

In the early 1970's, with LEAA funding, the Institute developed for the District of Columbia Superior Court an automated case-tracking system known as the Prosecutor's Management Information System (PROMIS). In 1981, when LEAA was disestablished, the contract was assigned to the Department of Justice's Bureau of Justice Statistics. In 1982, DOJ's Executive Office for United States Attorneys (EOUSA) allocated over $500,000 to finance enhancements to PROMIS and provide for locally-based installation in a number of United States Attorney's offices. Overall, the DOJ awarded INSLAW a $9.9 million contract to install PROMIS in 94 U.S. Attorney's offices.

During the development of PROMIS, it is undisputed that the product of the original research and development is in the public domain. However, in the early 1980's INSLAW added enhancements over which they claimed proprietary rights by having utilized private funds for the development. The DOJ disputed this assertion, and a long period of negotiation and contract modification ensued. Ultimately, in July 1983, faced with complaints about INSLAW from DOJ and US Attorney officials, DOJ began suspending contract payments. In February 1984, DOJ terminated a portion of INSLAW's contract due to delays in the systems-installation schedule. In February 1985, INSLAW filed for re-organization under chapter 11 of the bankruptcy laws. In June 1986, INSLAW sued the United States, alleging that DOJ had appropriated its proprietary software and conspired to force it into bankruptcy.

In March 1987, INSLAW [redacted] had a breakfast meeting with [redacted] who was then having personnel difficulties with [redacted] reportedly told [redacted] that INSLAW was being treated unfairly by DOJ. b6 b7C

According to a March 17, 1988 letter from [redacted] attorney, [redacted] to Deputy Attorney General [redacted] at the March 1987 breakfast:

> And then...my client told [redacted]..about [redacted] machinations in the U.S. Trustee's Department as it related to INSLAW. This included information that [redacted] had put pressure on [redacted] who had been [redacted] in New York [redacted] in Alexandria, [redacted] to take over the INSLAW case by sending [redacted] to [redacted] apparently for the purpose of converting INSLAW. [redacted] had let [redacted] know [redacted] plans in a conversation which had taken place on January 12, 1987. b6 b7C

Shortly after the March 1987 breakfast meeting, [redacted] was subpoenaed to give deposition testimony in the INSLAW litigation against DOJ. Also testifying at deposition and/or trial were, inter alia, b6 b7C

[redacted]

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Trial was held in June 1987. On January 25, 1988, United States Bankruptcy Judge George Francis Bason, Jr. ruled that DOJ had "unlawfully, intentionally and wilfully sought to cause the conversion of INSLAW's chapter 11 re-organization case to a chapter 7 liquidation case without justification and by improper means." Furthermore, the bankruptcy judge ruled that the DOJ had "an interest in seeing that INSLAW was liquidated in order to weaken or eliminate INSLAW's ability to press its contract disputes with DOJ." In order to effect this liquidation, reportedly agreed to put pressure on his subordinate to liquidate INSLAW. reasons for accomplishing this liquidation would be to curry favor with higher officials at DOJ to support legislation to make permanent a then-pilot program for the establishment of the U.S. Trustee office and the DOJ. allegedly pressured b6 b7C the INSLAW bankruptcy to convert this bankruptcy case to a chapter 7 liquidation. When resisted, sought to have to be detailed to either in Alexandria or to in order that could accomplish the conversion. When resisted, retaliated against him by creating additional administrative burdens on

The judge ruled the INSLAW's witnesses had testified truthfully while those for the DOJ had not, ranging from intentionally lying to failure of recollection.

In the end, the judge awarded INSLAW approximately $7 million in damages and $1 million in attorney fees. On June 17, 1988, DOJ filed an extensive appeal of the judgement.

As noted above, AAAG Keeney requested on May 2, 1988 that allegations of perjury be investigated by the FBI. Specifically, had made out-of-court allegations to b6 of pressure to convert INSLAW, yet testified that he b7C had exaggerated to hurt and that no one had ever told him that had pressured to convert the case to a chapter

7. Later, when [redacted] learned that DOJ was proposing his removal, he, through counsel, recanted his testimony and claimed the veracity of his original statements to [redacted] that there was a conspiracy within DOJ to liquidate INSLAW. Counsel also asserted that [redacted] had lied under oath. In response, the DOJ Civil Division (which had litigated the INSLAW damages suit) contended that [redacted] recantation, if true, would signal that his sworn testimony was perjurous. b6 b7C

Therefore, AAAG Keeney and Public Integrity Section Attorney [redacted] requested that [redacted] be investigated for possible perjury.

III. TESTIMONY

[redacted] b6 b7C

[redacted]

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3. OPR Statements

On September 13, 1988, DOJ Office of Professional Responsibility (OPR) Attorneys [redacted] were interviewed regarding OPR interviews of [redacted] and [redacted] advised that they had interviewed [redacted] on August 18 and September 22, 1987. After reviewing notes, they advised that [redacted] made the following unsworn pertinent statements:

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[redacted]

[redacted] b6 b7C

4. Testimony To Congressional Committee

On October 14, 1988, Public Integrity Section Attorney [redacted] advised the FBI that the Senate Permanent Sub Committee on Investigations had denied a DOJ request for a copy of [redacted] testimony before the Sub-committee. b6 b7C

5. [redacted] Purported Recantation

By letter dated March 17, 1988 from [redacted] attorney [redacted] to Deputy Attorney General Arnold I. Burns, [redacted] argued for a rejection of the DOJ proposal to terminate [redacted] This letter re-alleges a series of wrongful acts by DOJ officials against INSLAW, and [redacted] in particular. In pertinent part, [redacted] makes the following points by and about [redacted] b6 b7C

1. [redacted] had had a long-standing personality conflict with [redacted] culminating in early 1987 in [redacted] belief that [redacted] wanted to fire him.

2. A mutual friend suggested that [redacted] meet with [redacted] felt that [redacted] should know that DOJ was treating them unfairly.

3. At this March 1987 [redacted] told [redacted] about [redacted] machinations at EOUST regarding INSLAW. This included information that [redacted] had pressured [redacted] while the latter was U.S. Trustee in New York, to assist the Trustee handling the INSLAW bankruptcy in Alexandria, Virginia [redacted] Specifically, this assistance was to take the form of [redacted] being detailed to [redacted] office to convert INSLAW. [redacted] had told [redacted] plans in a January 12, 1987 conversation. b6 b7C

4. In March 1987, [redacted] learned that [redacted] original deposition testimony in the INSLAW litigation corroborated his recollection of their conversation regarding [redacted] efforts to intercede to liquidate INSLAW. But then [redacted] recanted his testimony. Also, [redacted] could not remember a conversation with [redacted] regarding INSLAW. b6 b7C

5. As a result of no other corroboration, [redacted] became very fearful, since he alone was now asserting that

[redacted] pressured for INSLAW's conversion. Several acts of job-related pressure on [redacted] are alleged, as a result of [redacted] deposition testimony.

6. Between March and June 1987, [redacted] felt tremendous pressures over this matter. When he gave trial testimony in June 1987, he was not adequately prepared by the DOJ trial attorney. Therefore, he was "overly circumspect" about his testimony in the INSLAW case and tried to excuse his position by testifying primarily about the way [redacted] had been treating him. b6 b7C

7. In July 1987, at a social function in the home of [redacted] came up to [redacted] and told him, inter alia that "you told the truth...I got confused...I thought that by changing my story I would hurt less people...the easiest thing to do was recant...less people would be hurt if I just bailed out". [redacted] also reminded [redacted] about what they had discussed with [redacted] b6 b7C

6. Attempt TO INTERVIEW [redacted]

Public Integrity Section Attorney [redacted] advised that he had requested of Attorney [redacted] that [redacted] submit to an FBI interview. [redacted] responded that his client would not do so unless he was granted immunity. Since there was no reason to grant [redacted] immunity from prosecution for perjury at this stage of the investigation, [redacted] declined to have his client interviewed.

B. [redacted]

1. Deposition Testimony

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[redacted]

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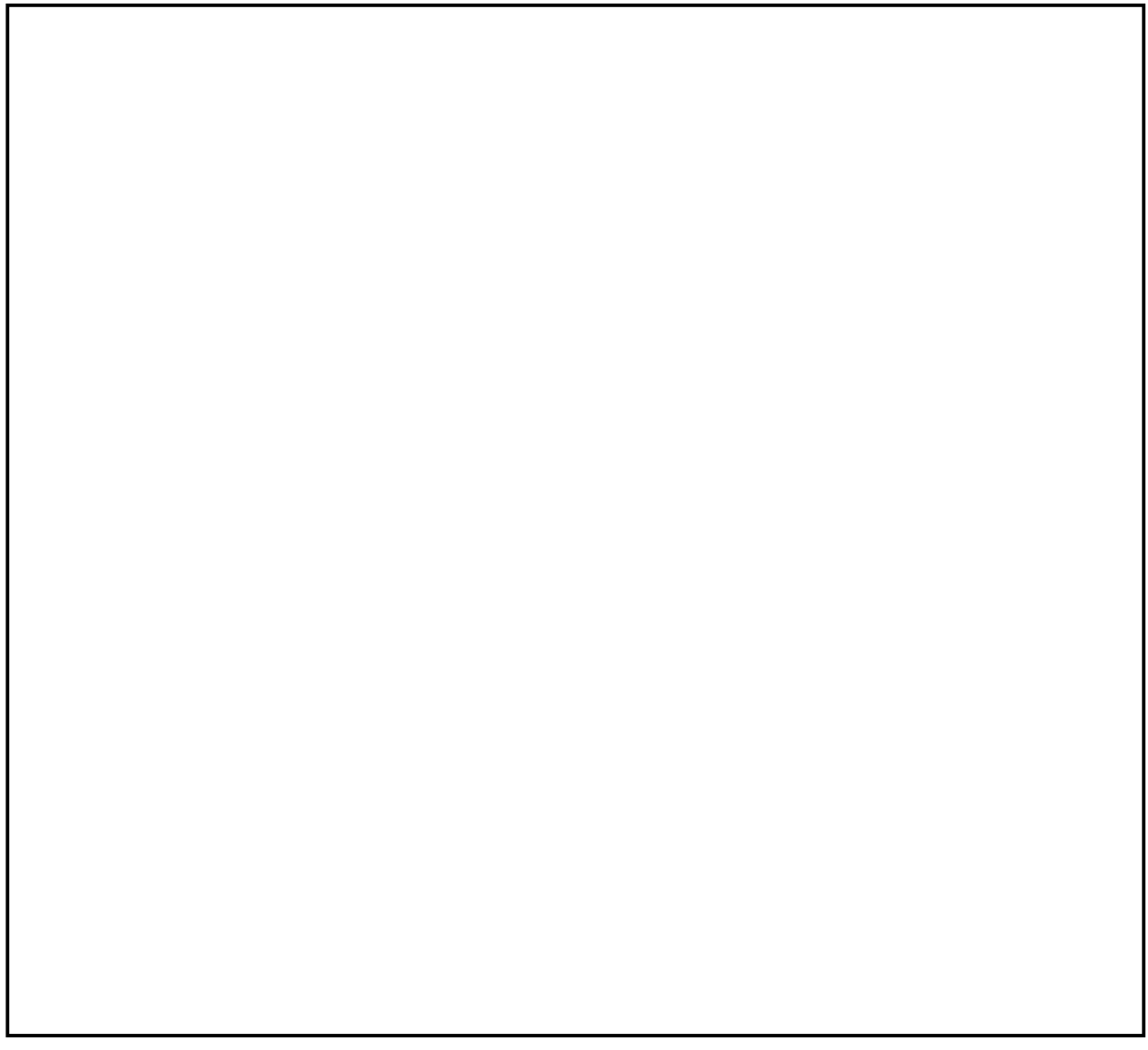
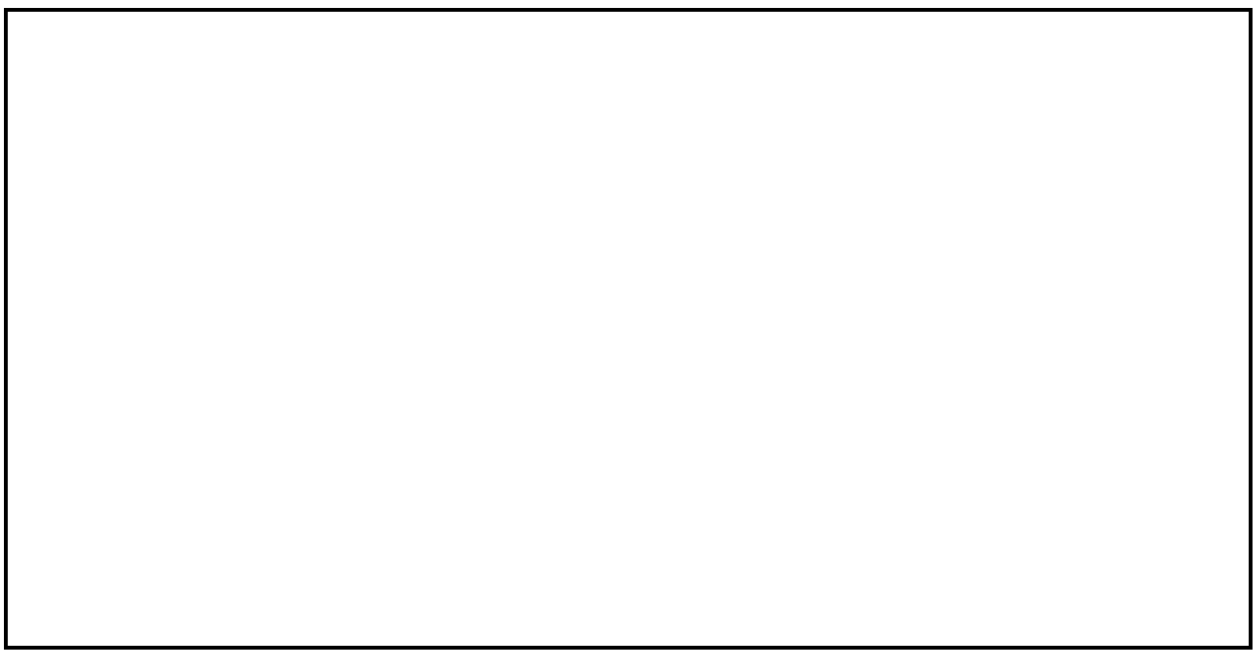
2. Second Deposition





3. Trial Testimony

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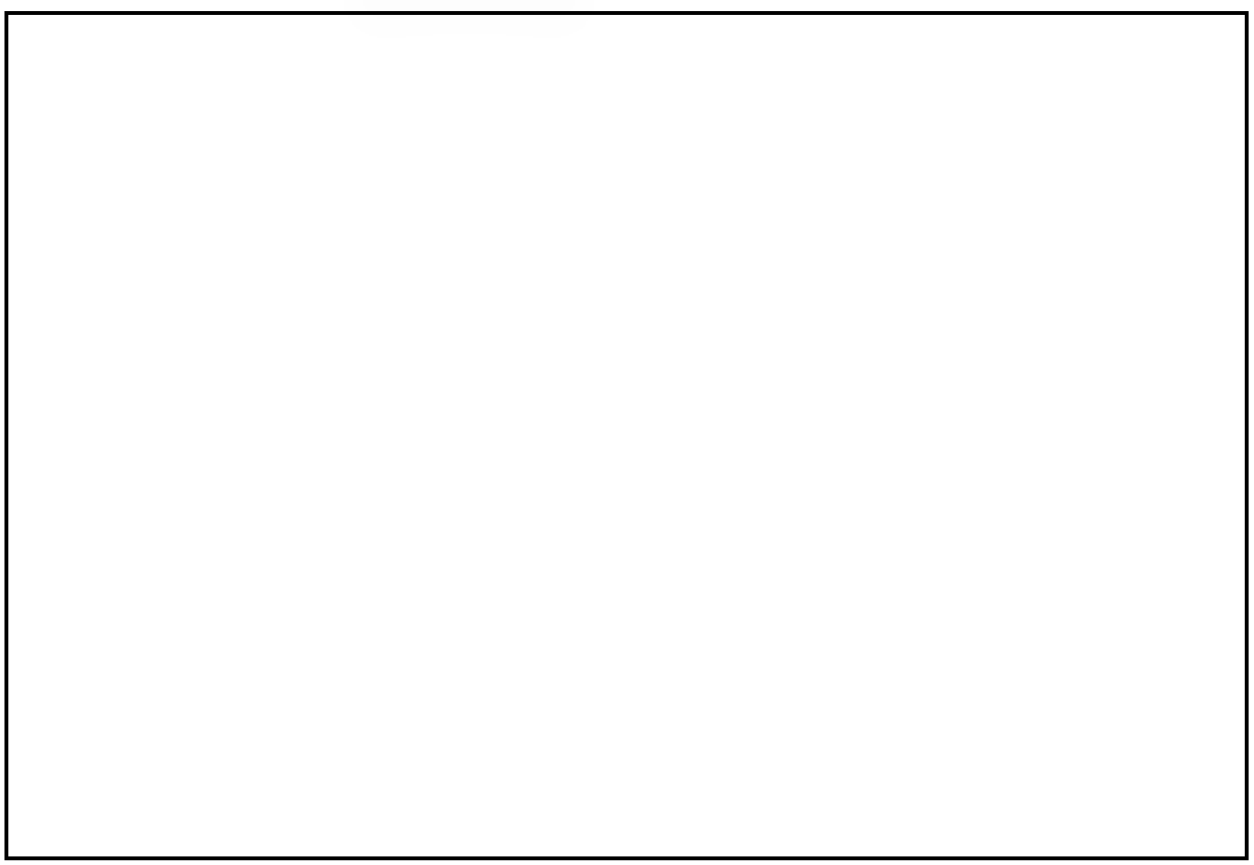

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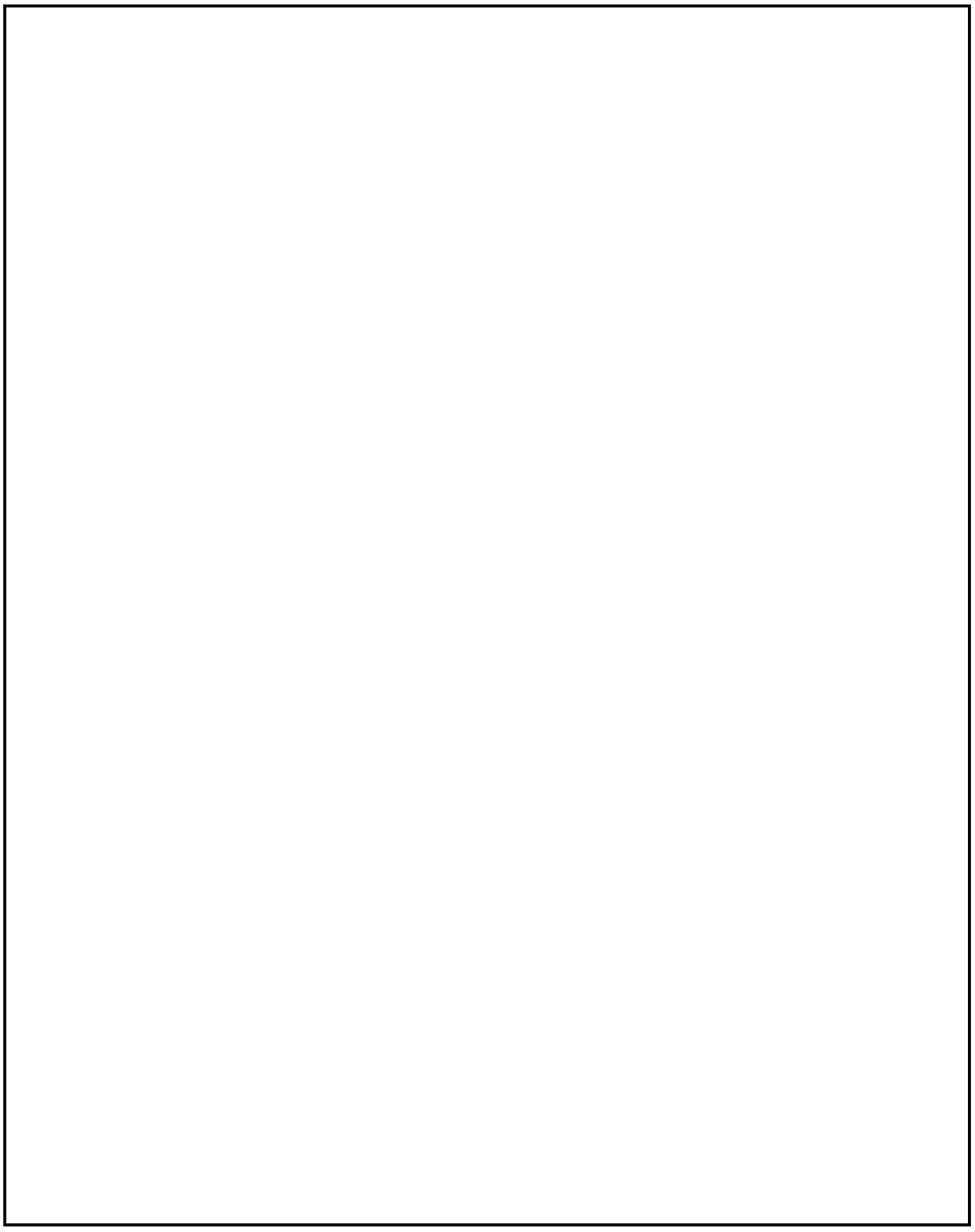

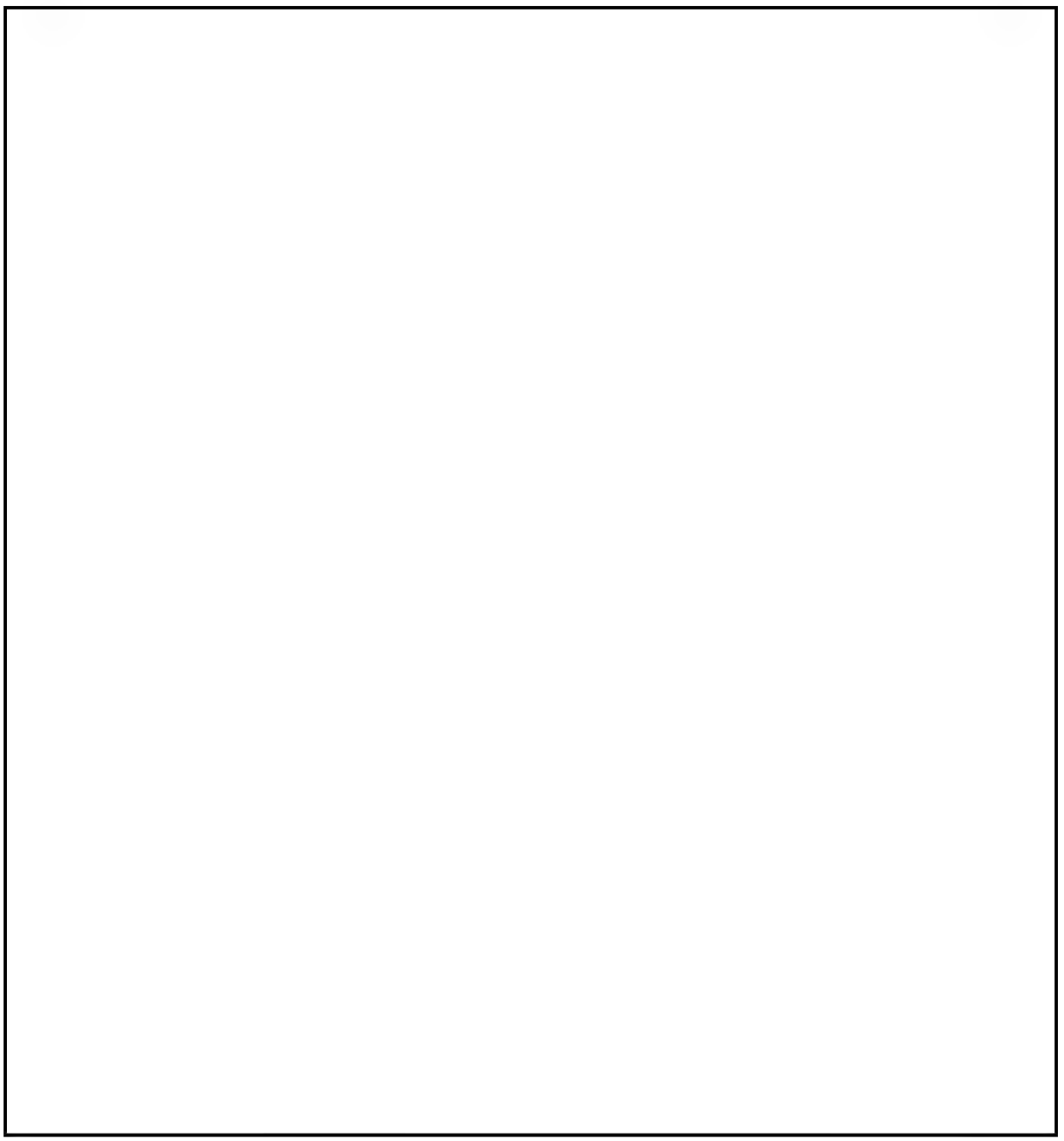

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4. FBI Interview

On October 19, 1988, [redacted] was interviewed by Special Agents of the Federal Bureau of Investigation and testified in pertinent part:

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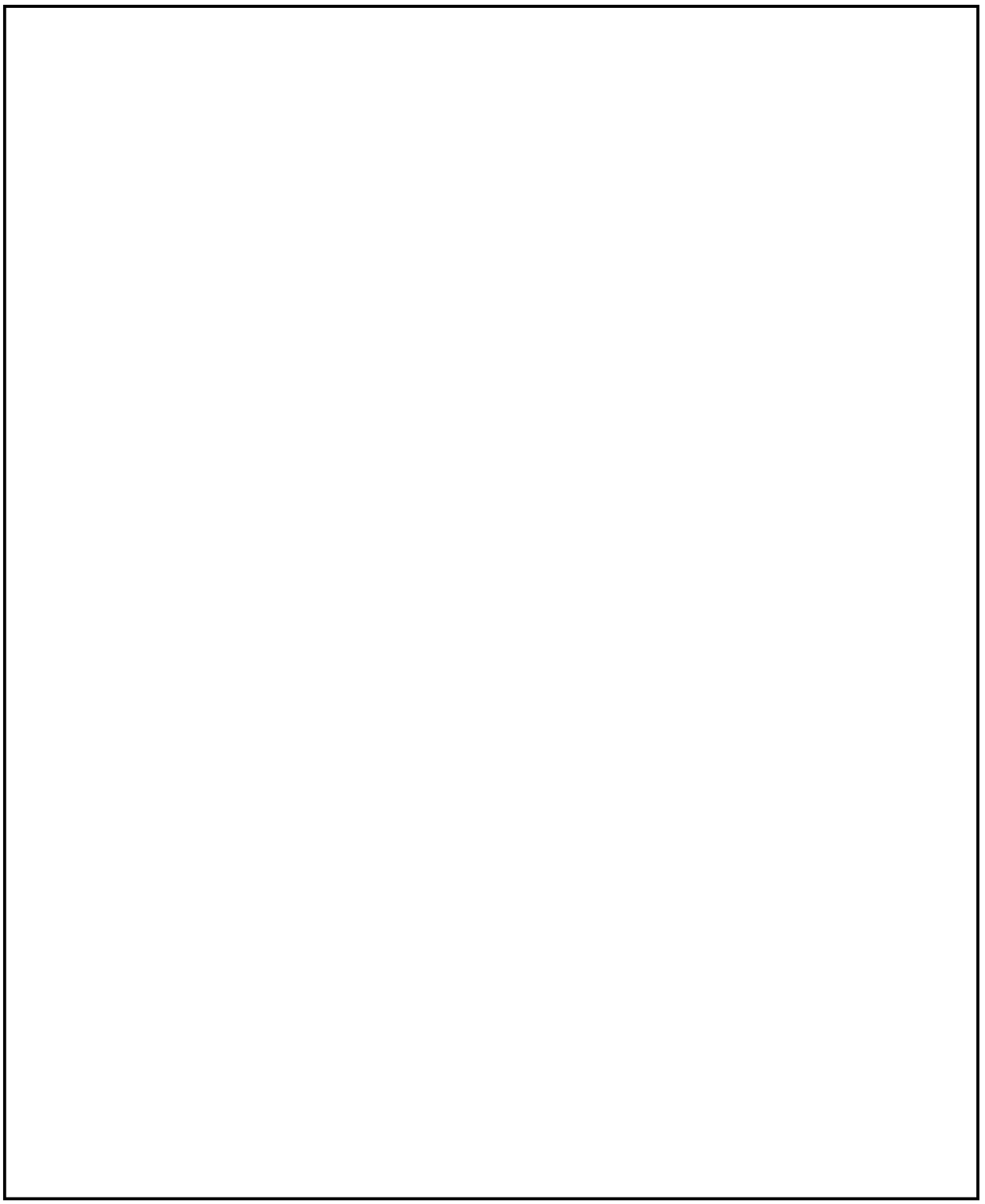

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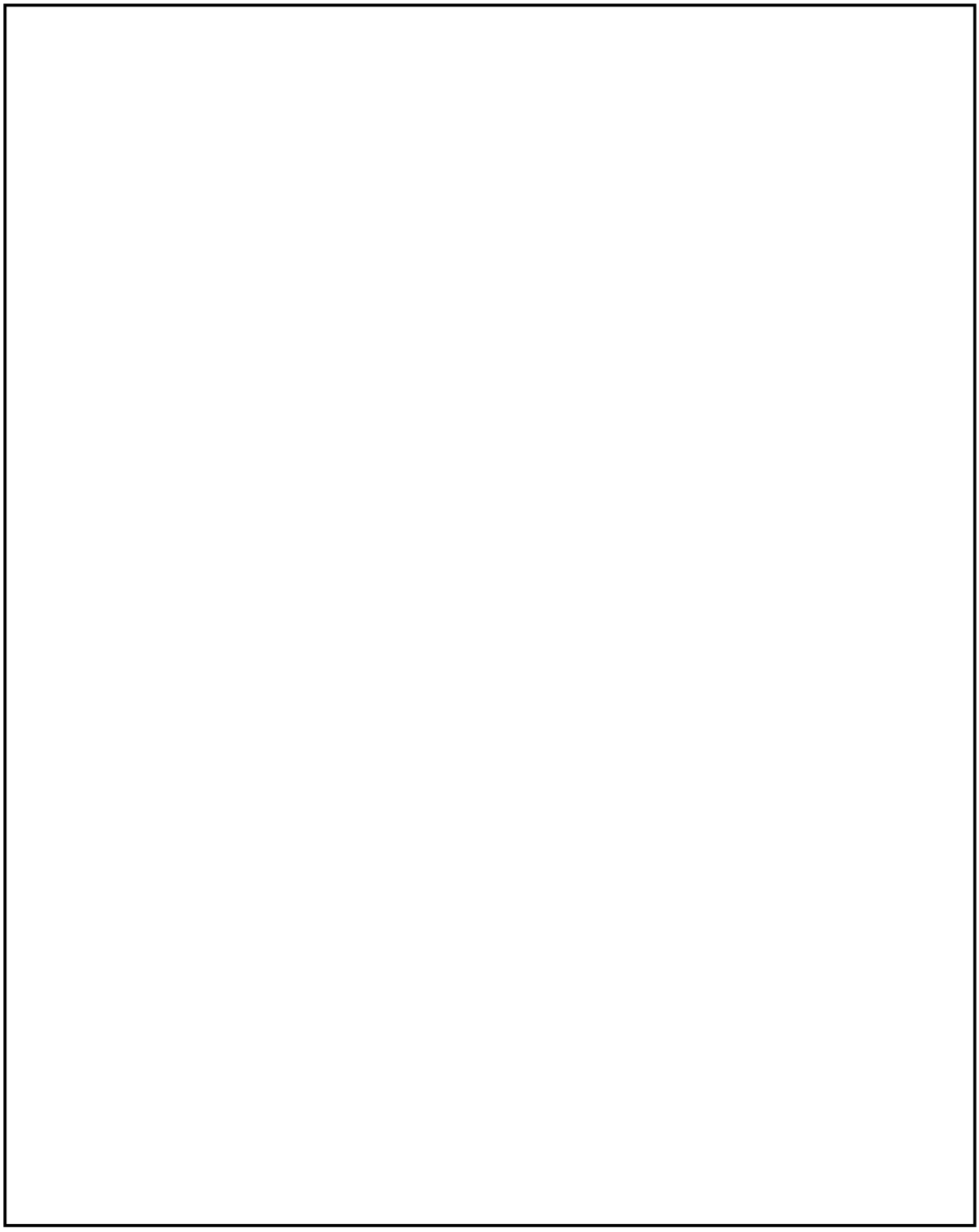

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C. [redacted]

1. Deposition Testimony

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[redacted]

[redacted]

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2. Recantation Affidavit

On March 26, 1987, the date after the above deposition, [redacted] executed a sworn affidavit, with the following relevant points:

[redacted]

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3. Second Deposition

On May 27, 1987, [redacted] was re-deposed and made the following pertinent points:

[redacted]

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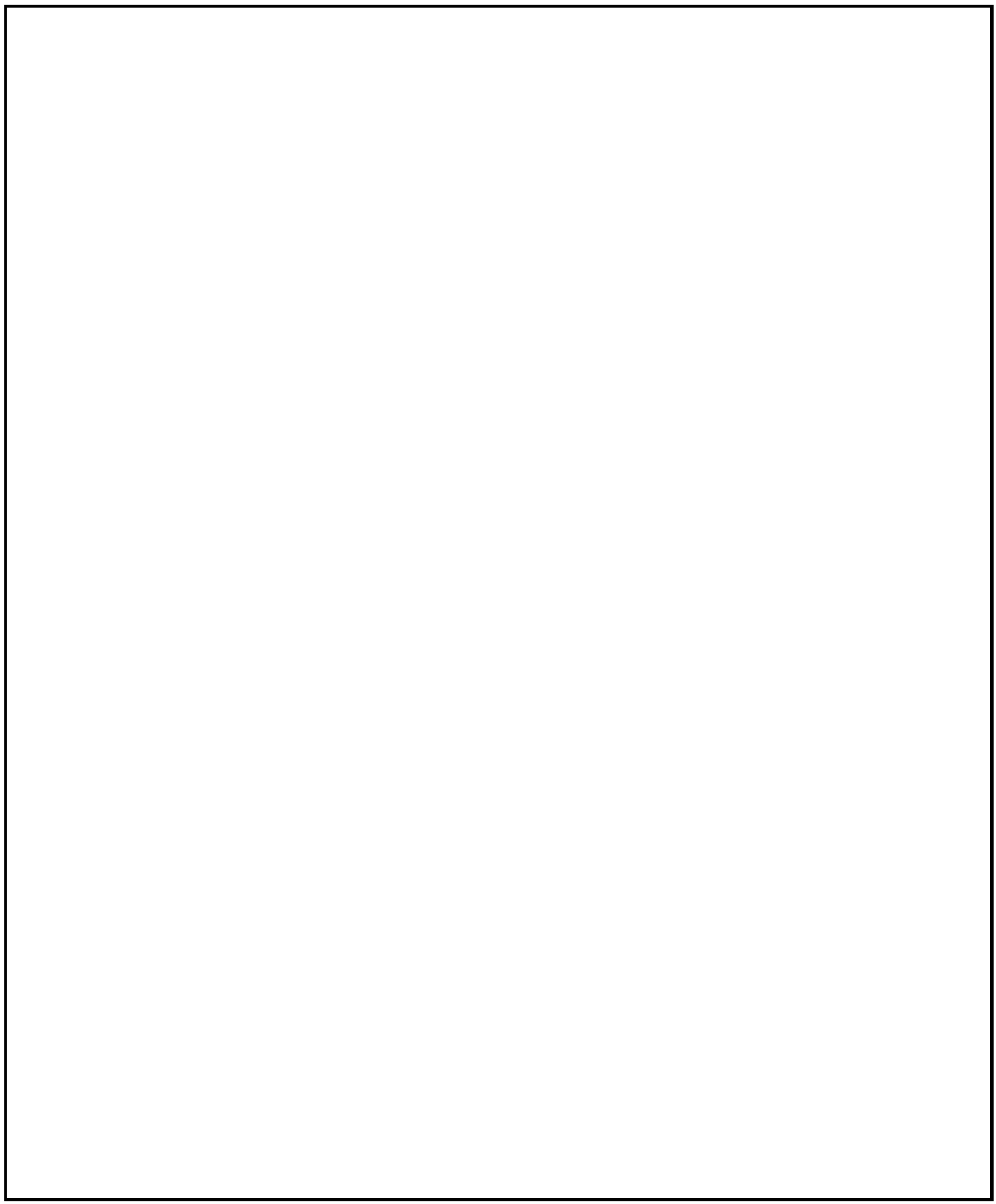

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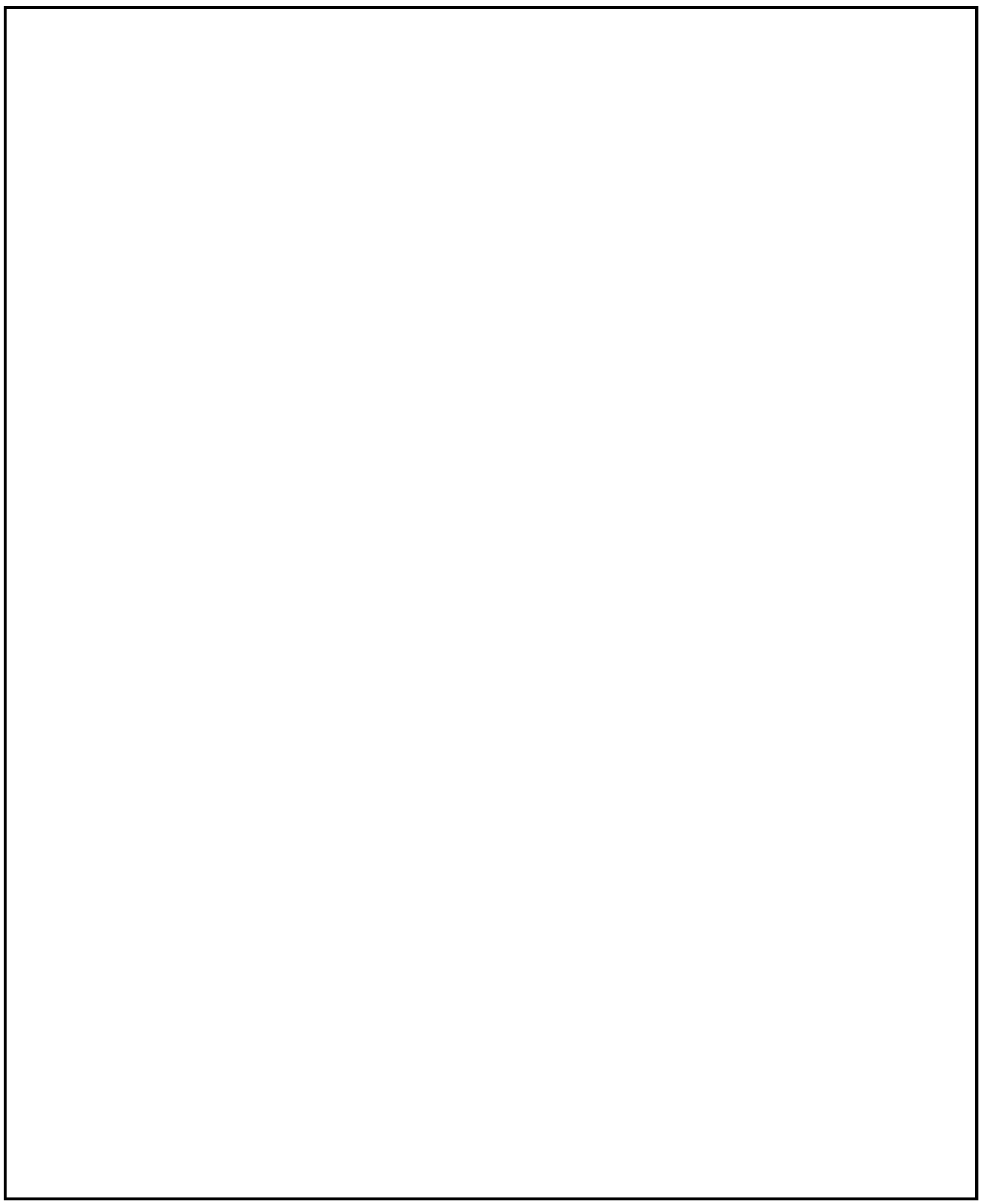

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D. OTHER WITNESSES

I. [redacted] b6 b7C

A. Deposition

[redacted] Southern District of New York, was deposed in the INSLAW litigation on May 14, 1987, and testified in pertinent part:

[redacted] b6 b7C

[redacted] b6 b7C

B. FBI Interview

On October 14, 1988, [redacted] was contacted at his office in New York, New York. [redacted] advised that he has already testified under oath in the civil case concerning INSLAW, and was subpoenaed to testify before a Senate Sub-Committee in early September, before which he also gave sworn testimony. [redacted] stated strongly that in view of the fact that he stands by his prior testimony in the civil suit, and, in his opinion, his testimony before the Senate Sub-Committee was entirely consistent with his trial testimony, that no purpose would be served in having another interview. Therefore, he declined to be interviewed at that time. b6 b7C

II. [redacted]

[redacted] Second Circuit Court of Appeals, was interviewed in his chambers on October 20, 1988. [redacted] advised an in pertinent part: b6 b7C

[redacted]

III. [redacted]

[redacted] Southern District of New York, was interviewed on October 20, 1988, and testified in pertinent part: b6 b7C

[redacted]

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IV. [redacted]

[redacted], City of New York, was interviewed on October 21, 1988, and testified in pertinent part:

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[redacted]

[redacted]

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V. [redacted]

A. Deposition

[redacted] Executive Office for United States Trustees (EQUST), Department of Justice (DOJ), was deposed on March 23, 1987 and testified in pertinent part:

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[redacted]

V. [redacted]

A. Deposition

[redacted] Executive Office for United States Trustees (EOUST), Department of Justice (DOJ), was deposed on March 23, 1987, and testified in pertinent part:

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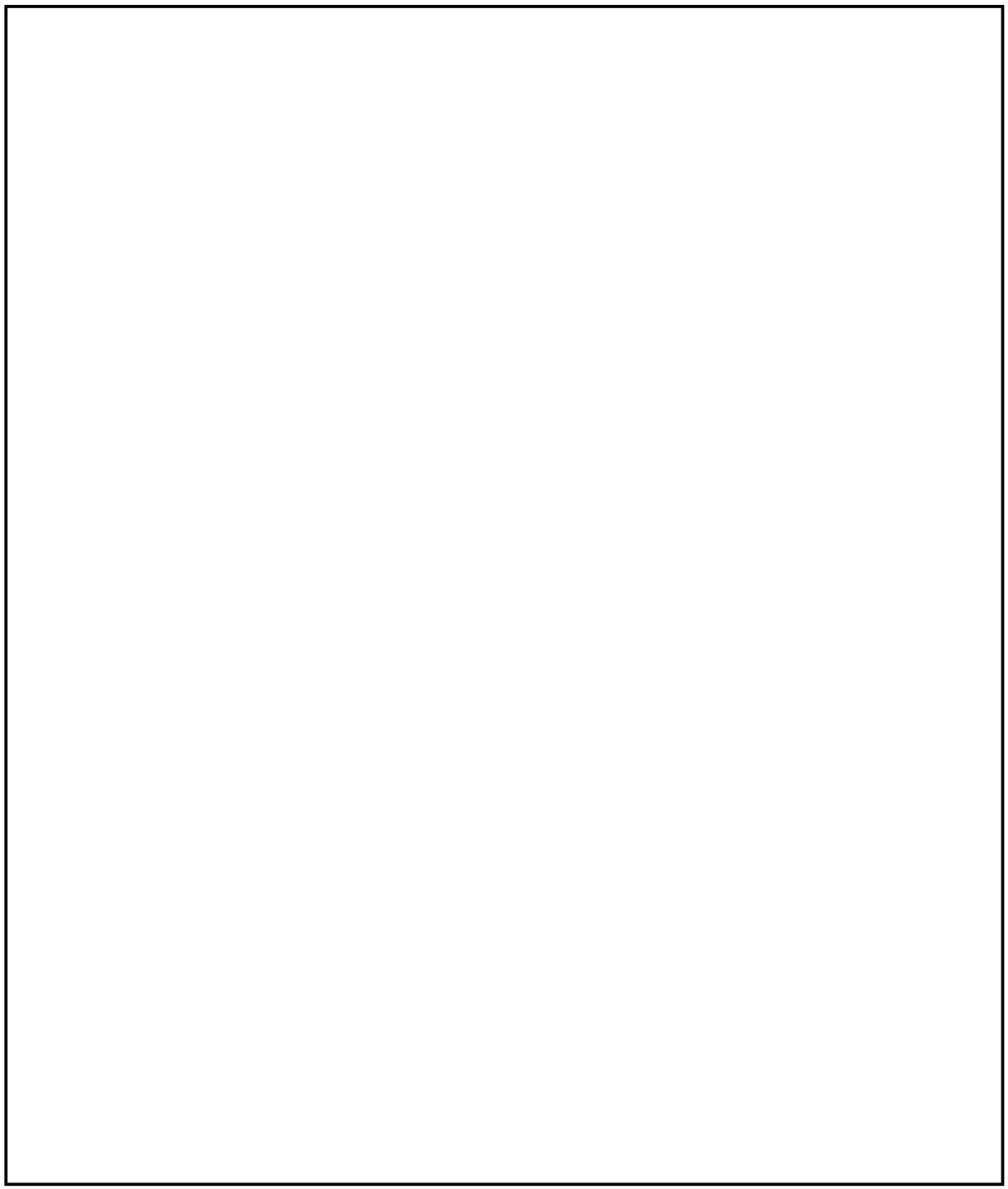
[redacted]



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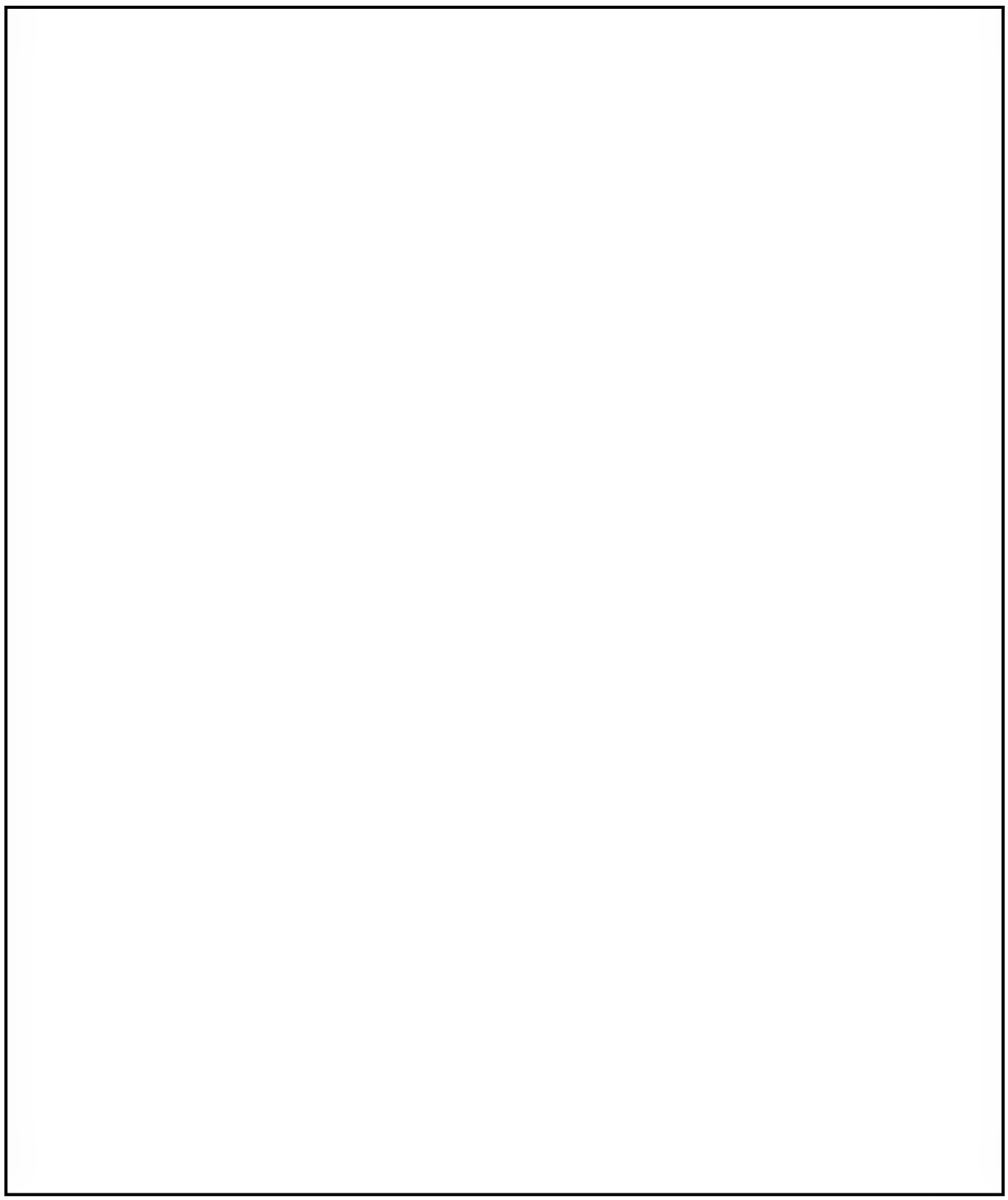

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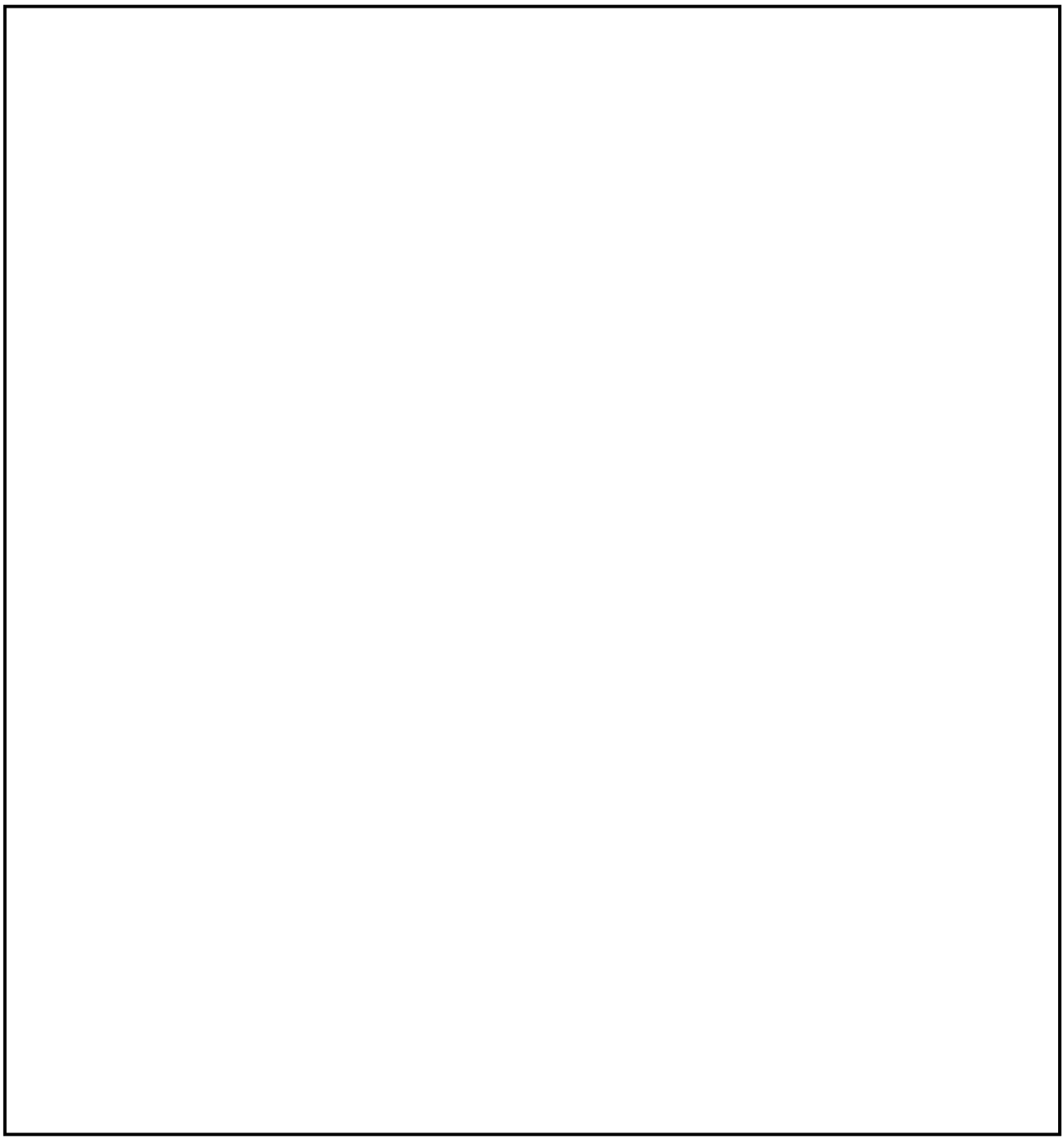

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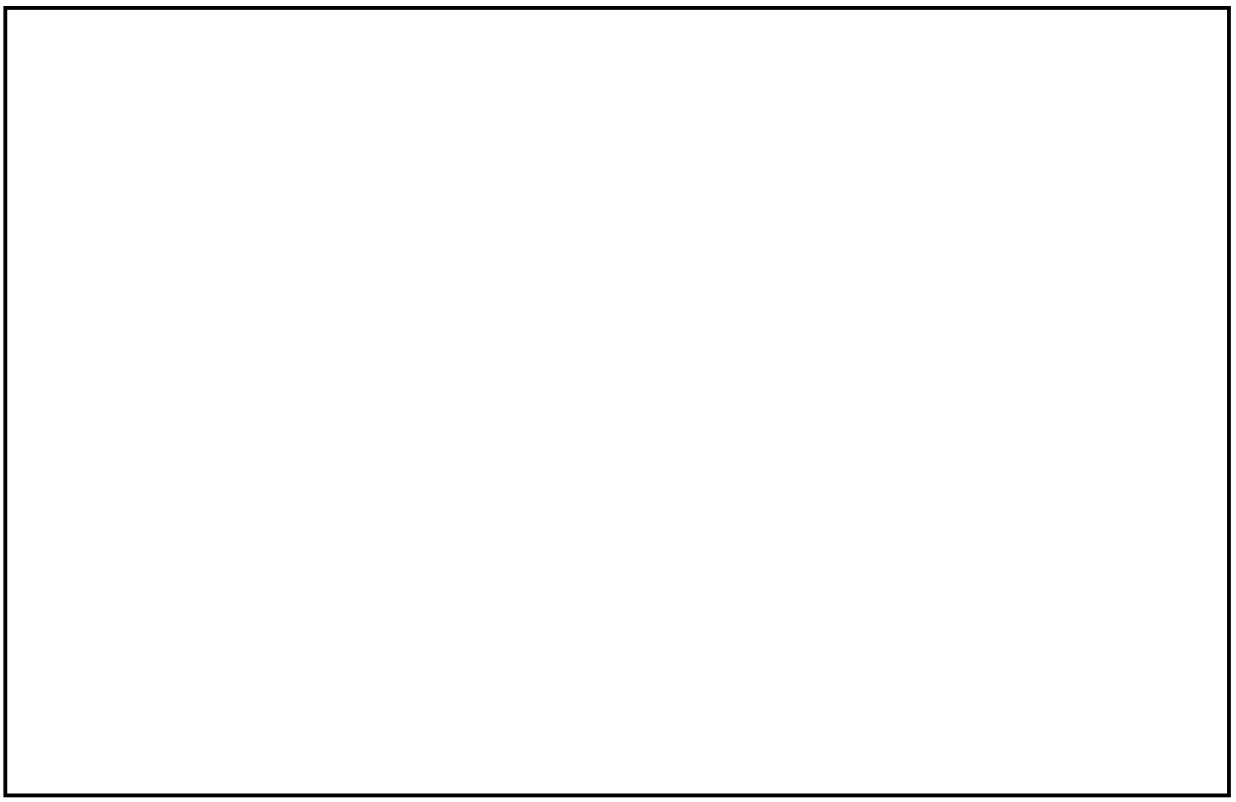

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B. OFFICE OF PROFESSIONAL RESPONSIBILITY INTERVIEW

On August 17, 1988, [redacted] was interviewed by Attorneys [redacted] of the DOJ Office of Professional Responsibility (OPR). This interview was conducted under oath, and [redacted] testified in pertinent part:

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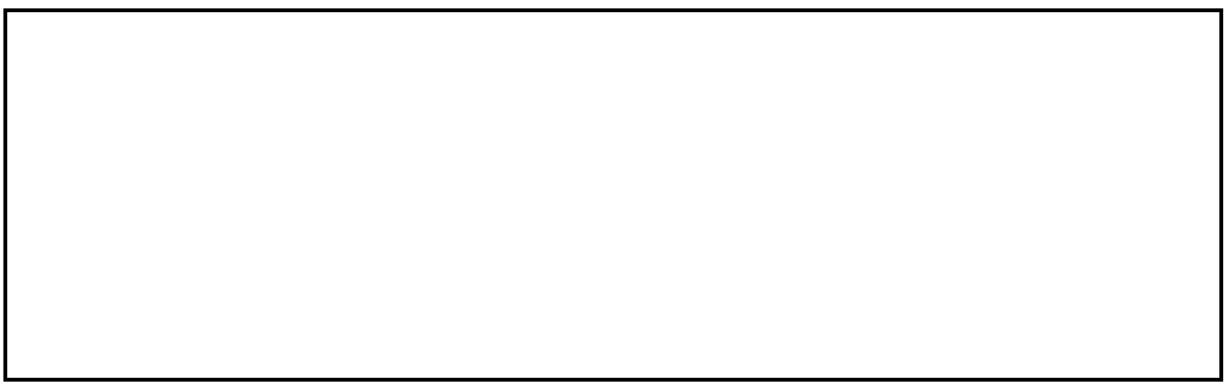

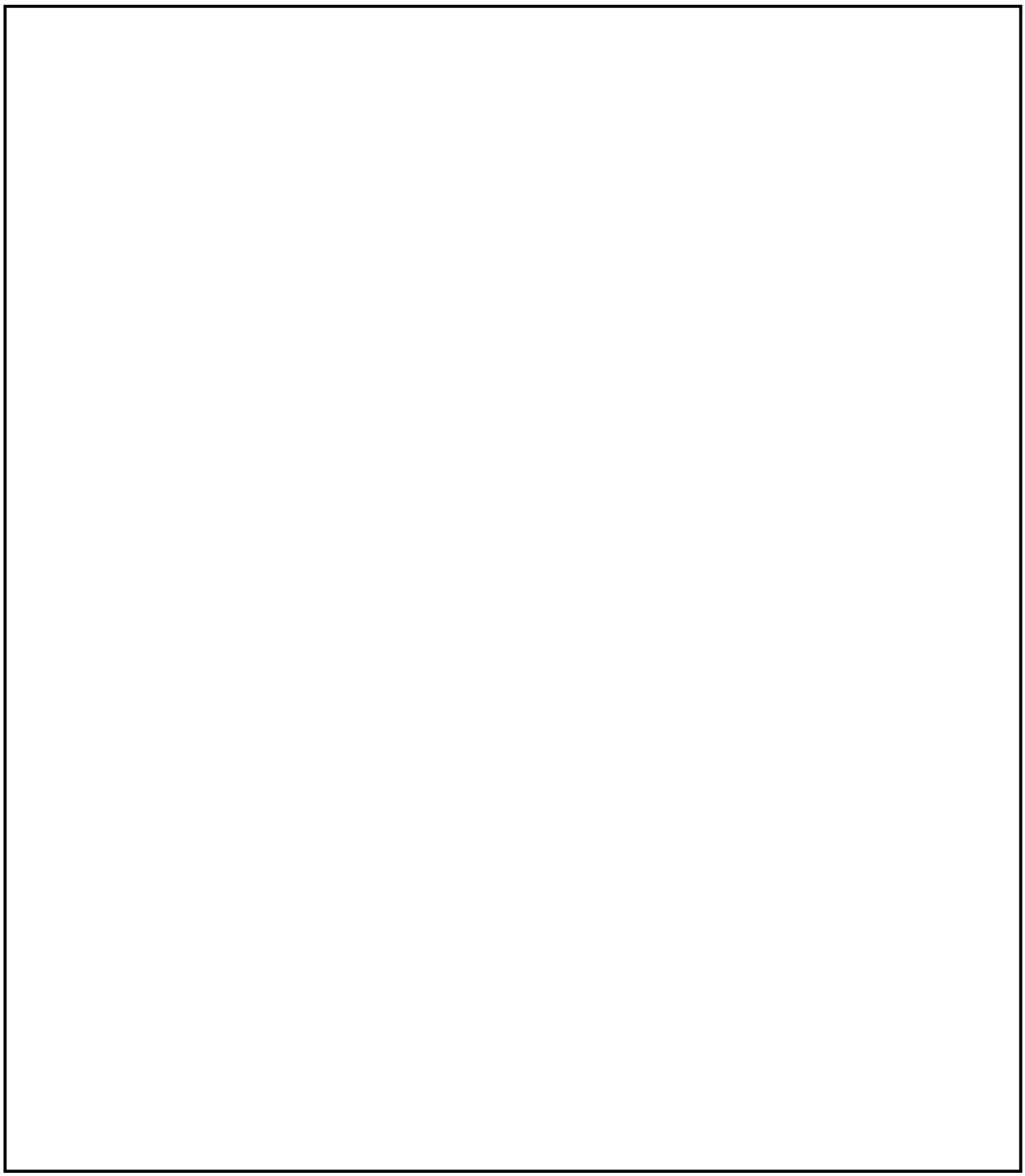

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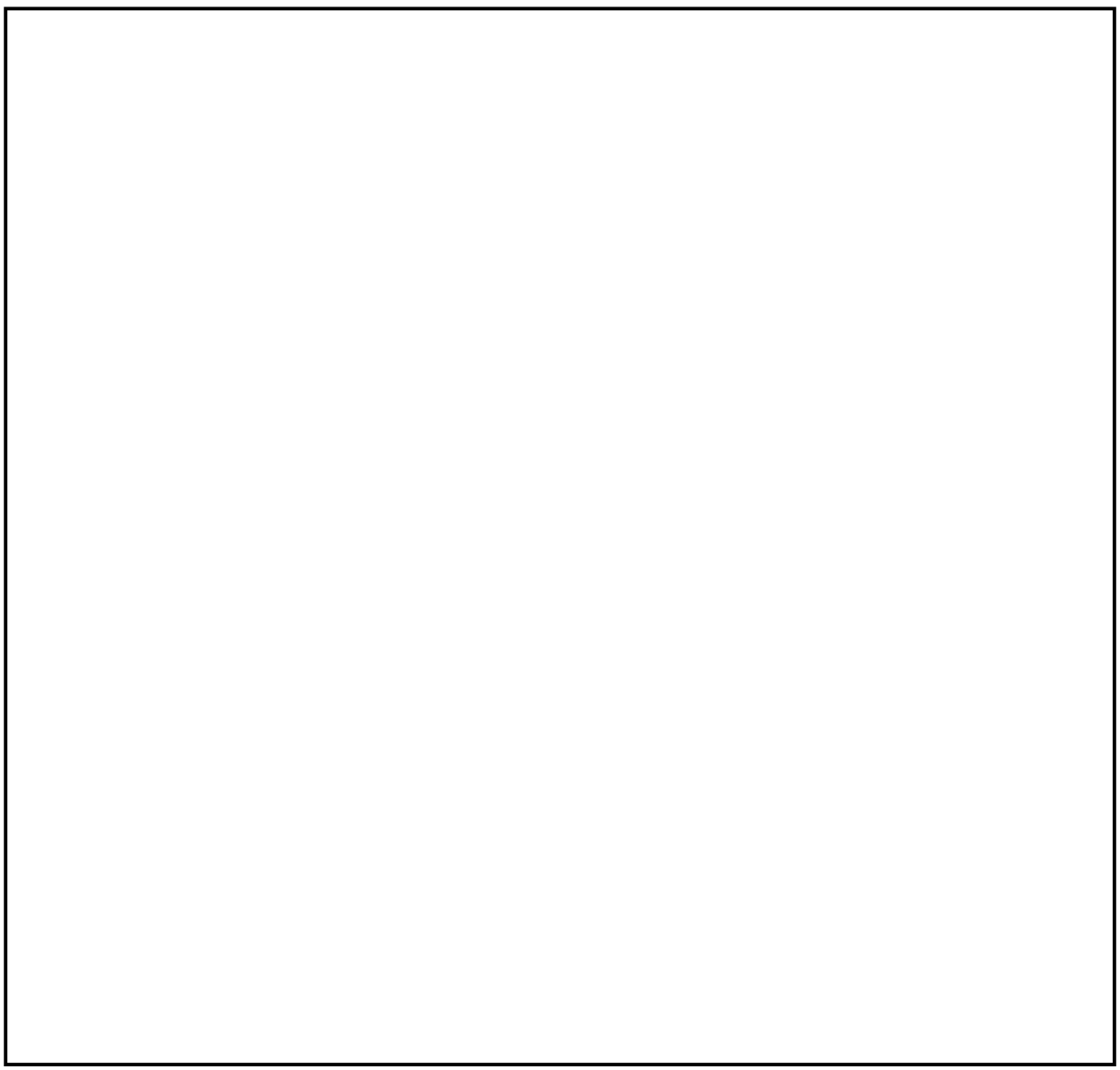

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IV. SUMMARY

A. [redacted] (through the latter's recantation affividate and subsequent testimony) and [redacted] all concur that [redacted] or anyone on [redacted] to convert or otherwise injure INSLAW. [redacted] was also under no pressure from DOJ to influence the INSLAW litigation.

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B. [redacted] had no direct contact with [redacted] regarding the detailing of New York [redacted] to Alexandria, to assist with INSLAW.

C. [redacted] disagree about whether [redacted] suggested to [redacted] be detailed to Alexandria. [redacted] was not contacted, and the matter went no further. b6 b7C

D. [redacted] testimony is inconsistent and not supported by other witnesses. The inability to obtain [redacted] additional sworn testimony to a Congressional sub-committee, and his submitting to FBI interview, has impeaded the analysis of [redacted] various statements.

U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to
File No.

7799 Leesburg Pike
Suite 200, South Tower
Falls Church, Virginia 22043
April 24, 1989

[redacted]
United States Department of Justice
Public Integrity Section
Post Office Box 27321
Central Station
Washington, D. C. 20088

b6
b7C

Dear [redacted]

Enclosed are two copies of a Letterhead Memorandum prepared by Special Agent [redacted] regarding the matter of [redacted] et al.

SA [redacted] will await your reply as to the prosecutive merit and opinion of your office in this matter.

Sincerely yours,

W. Douglas Gow
Special Agent in Charge

By: [redacted]
Supervisory Special Agent

Enclosures 2

1- Addressee
2- WMFO (74-330) (P)
[redacted]
(3) [redacted]

74-330-35

SEARCHED [redacted] INDEXED
SERIALIZED [redacted] FILED [redacted]
APR 27 1989

[redacted]

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6/21 – D6
writing declin next.

FD-36 (Rev. 8-29-85)

FBI

TRANSMIT VIA:
☐ Teletype
☐ Facsimile
☒ AIRTEL

PRECEDENCE:
☐ Immediate
☐ Priority
☐ Routine

CLASSIFICATION:
☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ UNCLAS E F T O
☐ UNCLAS

Date 6/21/89

TO : DIRECTOR, FBI
ATTN: PUBLIC CORRUPTION UNIT, WCC, (SSA [redacted]

FROM : SAC, WMFO (74-330)(P)(C-2)

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[redacted]

POSSIBLE PERJURY
OO:WMFO

Ref WMFO airtel, dtd 4/24/89; Butelcall SSA [redacted] and WMFO SA [redacted] 6/21/89.

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For the information of the Bureau, on 6/21/89, Trial Attorney [redacted] Public Integrity Section, DOJ, advised that the final declination has been drafted and sent to the Chief, Public Integrity Section, for final signature. He will notify the FBI upon final action.

WMFO will continue to follow with DOJ, and notify the Bureau upon final action.

3-Bureau
2-New York
2-WMFO

[redacted]

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74-330-36

SEARCHED [redacted] INDEXED [redacted]
SERIALIZED FILED
JUN 23 1989

Approved: _____ Transmitted _____ Per _____
(Number) (Time)

U.S. Department of Justice

Washington, D.C. 20530

JUL 3 1989

Mr. W. Douglas Gow
Special-Agent-In Charge
Washington Metropolitan Field Office
Post Office Box 3269
Falls Church, Virginia 22043

Dear Mr. Gow:

Re: INSLAW

This letter is to inform you that the Criminal Division has declined prosecution of [redacted] for alleged perjury relating to their testimony in the INSLAW bankruptcy proceeding. b6 b7C

Sincerely,

Gerald E. McDowell
Chief
Public Integrity Section
Criminal Division

cc: Special Agent [redacted]
Squad C-2

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b7C

copy furnished to SSA [redacted] PCU per telecall 8/1/89

74-330-37

SEARCHED [redacted] INDEXED
SERIALIZED [redacted] FILED [redacted]
JUL 6 1989
FBI — WASH. FIELD OFFICE
[redacted]

FD-36 (Rev. 8-29-85)

FBI

TRANSMIT VIA:
☐ Teletype
☐ Facsimile
☒ AIRTEL

PRECEDENCE:
☐ Immediate
☐ Priority
☐ Routine

CLASSIFICATION:
☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ UNCLAS E F T O
☐ UNCLAS

Date 7/8/89

TO : DIRECTOR, FBI
ATTENTION: PUBLIC CORRUPTION UNIT;
ATTENTION: SPIN UNIT

FROM : SAC, WMFO (74-330)(RUC)(C-2)

10.4.89 to inadvertently placed in file without closing by former note clerk.

[redacted]

POSSIBLE PERJURY
OO:WMFO

Ref WMFO airtel, 6/21/89, and WMFO telcall SA [redacted] to SSA [redacted] 7/5/89.

For the information of the Bureau and New York, by letter dated 7/3/89, the Chief, Public Integrity Section, DOJ Criminal Division, advised that prosecution has been declined for the above subjects, relative to their testimony in the INSLAW bankruptcy proceeding.

4-Bureau
2-Public Corruption Unit, WCC, CID
2-SPIN Unit, CR/SI, CID
2-New York
(4)-WMFO
2-(74-330)(C-2)
2-(161A-20677)(A-1)
[redacted]

74-330-38

[redacted]

JUL 11 1989

FBI FIELD OFFICE

[redacted]

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Approved: _____ Transmitted _____ (Number) (Time) Per _____

74-330 - 39

closed 4/89

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b7C

FD-350 (Rev. 5-8-81)

(Mount Clipping

Justice Dept. Bias Against Inslaw Seen

Senate Staff Unable To Prove Conspiracy

By Mark Potts
Washington Post Staff Writer

The staff of a Senate subcommittee said yesterday that it concluded after a 17-month investigation that Justice Department officials "exercised poor judgment" and showed personal bias in their handling of a controversial contract with a small Washington computer software company, Inslaw Inc.

But the subcommittee staff said it was unable to prove Inslaw's allegations of a conspiracy within the department to put the company out of business.

At the same time, the subcommittee staff sharply criticized the Justice Department for failing to cooperate completely with the staff's investigation into the Inslaw matter, which also is the subject of legal proceedings in bankruptcy and U.S. district courts in Washington.

"The staff's attempt to conduct a free, full and timely investigation was hampered by the department's lack of cooperation," the staff of the Senate's Permanent Subcommittee on Investigations said in its 80-page report.

The staff report complained that the department failed to produce witnesses and documents on request and forced employees interviewed by the subcommittee to be represented by Justice Department attorneys, which the subcommittee said may have been a conflict of interest.

A department spokeswoman said Justice was "pleased that the investigations committee report found no merit to Inslaw's numerous conspiracy-theory allegations," but she declined to comment on the other aspects of the report, saying the department was still reviewing it.

Meanwhile, sources said yesterday that the House Judiciary Committee has begun a separate investigation into the Justice Department's dealing with Inslaw as well as a related Justice Department computer procurement case, Project Eagle. The sources said four full-time investigators have been working on the investigation for more than a month.

The findings in the Inslaw case released yesterday by the investigations subcommittee staff echo some of those made by then-U.S. bankruptcy judge George F. Bason Jr., who ruled two years ago that the Justice Department "took, convert-

See INSLAW, D13, Col. 1

(Indicate page, name of newspaper, city and state.)
WASH POST
9/30/89
Date:
Edition: P. D-12

Title: "JUSTICE DEPT BIAS

Character:
or
Classification:
Submitting Office:

Indexing:
INSLAW

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Senate Staff Finds Justice Dept. Bias Against Inslaw

INSLAW, From D12

ed, stole . . . by trickery, fraud and deceit" computer software that Inslaw had developed for the department, and that some members of the department's staff had shown bias in dealing with the company.

The complicated dispute between Inslaw and the Justice Department dates to 1985, when Inslaw, which produced a case-tracking system used by U.S. attorneys' offices, filed for Chapter 11 bankruptcy protection from its creditors. Shortly afterward, Inslaw filed suit against the Justice Department, its biggest customer, alleging that employees of the department were engaged in a vendetta against it.

Among others, Inslaw cited the actions of C. Madison Brewer, the department official who handled the Inslaw contract and was a former employee of Inslaw who company officials said had been fired. Brewer has denied that he was biased against the company.

Over the past four years, the dispute between Inslaw and the Justice Department has grown increasingly bitter, with Inslaw alleging that there was a conspiracy against the company that reached to the highest levels of the department.

The company also alleged that department officials had conspired to influence other firms to harass Inslaw and had caused Bason to not be reappointed to a another term on the bankruptcy court.

Although the Senate subcommittee staff concluded that Brewer and some other Justice officials had shown bias against Inslaw and that the leadership of the department had improperly failed to act on the company's allegations of discrimination, the report said the staff could not prove any of the allegations of conspiracy.

William Hamilton, Inslaw's president, suggested yesterday that the problems the committee had in gaining cooperation from the department may have been the reason that the staff could not prove the allegations of conspiracy.

"If you have a conspiracy that is reaching into high levels of the Department of Justice and you can't interview many of the people [involved] . . . it's not surprising that you're unable to find the proof," Hamilton said. "The refusal to allow an independent body to investigate it just adds fuel to the fire."

FD-350 (Rev. 5-8-81)

(Indicate page, name of newspaper, city and state.)
WASH POST
Date: 11/23/89
Edition:
P B-17
Title: JUDGE RULES FOR INSLAW ON APPEAL
Character:
or
Classification:
Submitting Office: WMFO

Indexing:
INSLAW

b6
b7C

Judge Rules For Inslaw On Appeal

Justice Department Harassed Company

By Mark Potts
Washington Post Staff Writer

A federal district judge yesterday upheld a bankruptcy court's ruling that the Department of Justice improperly harassed a local computer software firm and tried to drive it out of business.

Senior U.S. District Judge William B. Bryant of Washington ruled that the department "acted willfully and fraudulently" to take and keep software that the company, Inslaw Inc., had developed under contract to the department to track cases in U.S. attorney's offices.

His strongly worded opinion rejected virtually every argument made by the Justice Department in its appeal of the bankruptcy court's 1987 ruling.

Bryant also ruled that the department had violated bankruptcy law by continuing to harass Inslaw after the company filed for bankruptcy protection and that it had improperly attempted to force the company to switch its bankruptcy filing from a Chapter 11 reorganization to a Chapter 7 liquidation.

"Instead of following the orderly procedures established by the bankruptcy code for resolving its dispute with Inslaw . . . [Justice] pursued a course of self-help," Bryant wrote in his 46-page opinion.

The only significant change Bryant made in the earlier opinion by then-Bankruptcy Judge George F. Bason Jr. was to recalculate the compensatory damages awarded to Inslaw, reducing them to $6.1 million from $6.8 million because Inslaw had not performed a service that was included in the original award. He upheld the bankruptcy court's order that the government pay Inslaw's attorneys' fees in the case. Punitive damages in the case have yet to be decided.

Amy Brown, a spokeswoman for the Justice Department, said the department was "reviewing the opinion and studying our options."

Bryant's ruling is the latest in a string of legal victories for Inslaw, a small District-based company that has been battling the Justice Department in court for four years.

Bason ruled in 1987 that the Justice Department "took, converted, stole" Inslaw's software "by trickery, fraud and deceit." Bason found that several Justice Department employees—including C. Madison Brewer, a former Inslaw employee who administered the Inslaw contract for the department—had shown bias against the company.

Two months ago, the staff of a Senate investigative subcommittee issued a report concluding that Justice Department officials "exercised poor judgment" and showed personal bias in dealing with Inslaw. At least one other congressional investigation into the Justice Department's dealings with Inslaw is underway.

William Hamilton, Inslaw's chairman, said of yesterday's decision: "We're very pleased by it. I think the fact that the district court decided

See INSLAW, B21, Col. 1

elow)

Judge Upholds Ruling Against Justice Dept.

INSLAW, From B17

that . . . 'the cold record' of fact by itself supports Judge Bason's decision is particularly telling."

Inslaw filed for protection from its creditors under Chapter 11 of the federal bankruptcy law in February 1985, after the Justice Department stopped paying the company in a dispute over Inslaw's performance on the contract and whether the department or the company owned the software. Inslaw filed suit against the department a year later.

In his ruling yesterday, Bryant said the Justice Department improperly continued to use and distribute the software after Inslaw had been dropped as a contractor. "The court is drawn to the same conclusion reached by the bankruptcy court," he wrote. "The government acted willfully and fraudulently to obtain property that it was not entitled to under the contract."

Without dealing specifically with the charges of bias against the company, Bryant wrote: "What is strikingly apparent from the testimony and depositions of key witnesses and many documents is that Inslaw performed its contract in a hostile environment that extended from the higher echelons of the Justice Department to the officials who had the day-to-day responsibility for supervising its work."

Whether they ... winners stand to get rich. was that yesterday's lott tended by about 75 peop ceeded with the upbeat ten church bingo game. "We three. Come on—three,

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PERJURY;
74-WF-330 (C)

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On 1/19/90 and 4/6/90, [redacted] furnished SA [redacted] (C-2) with [redacted]

This case was the subject of a perjury investigation, which was closed by the DOJ Public Integrity Section on 4/24/89.

74-WF-330 -41

[redacted]

APR 6 1990

[redacted]

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b7C

Memorandum

To : SAC, WMFO (74-WF-330) (C) Date 4/11/90

From : SA [redacted]

b6
b7C

Subject : [redacted]

PERJURY
OO: WMFO

Enclosed in Lib are misc items pertinent to INSLAW litigation against DOJ.

74-330-42

[redacted]

APR 1 1990

[redacted]

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Washington
BUSINESS JOURNAL

VOLUME 8, NUMBER 34 | ONE DOLLAR | WEEK OF JANUARY 15, 1990

Inslaw says Meese chums led hostile takeover plots

Firm wants Justice to probe claim of top-level conspiracy

By HUNTLEY PATON

One day in December 1984, a man named Daniel Tessler laid it on the line for Bill Hamilton, the embattled founder of D.C.-based computer software firm Inslaw Inc.

Tessler, chairman of New York-based investment house 53rd Street Ventures, which owned a small piece of Inslaw, told Hamilton and his wife Nancy to turn over to him the voting rights on their controlling interest in Inslaw's stock by the end of that business day.

Tessler reportedly said that if the Hamiltons refused, neither 53rd Street Ventures nor Inslaw's other backers would help raise the capital needed to fight off financial ruin. At the time, Inslaw was teetering on the edge of bankruptcy due to a string of mysteriously nasty contract disputes with the U.S. Department of Justice, the company's largest customer.

Hamilton, who indeed was forced to seek Chapter 11 protection for his company less than two months later and has been battling Justice ever since, now claims Tessler was secretly representing the business interests of Dr. Earl Brian, a close friend and political ally of former U.S. Attorney General Edwin Meese.

In addition, he says that Tessler's ultimatum was a key element in what two federal courts have already found to be a Justice Department conspiracy to run Inslaw out of business and steal its proprietary version of PROMIS, a software package designed specifically for prosecutors.

The story is part of a complex web of new allegations disclosed publicly for the first time as part of Inslaw's Dec. 26 suit in Washington's U.S. District Court. The

See INSLAW ADDS, page 16

Inslaw adds new details in conspiracy charge

INSLAW ADDS continued from page 1

suit seeks to compel the Justice Department to investigate evidence of wrongdoing in a scandal that one Justice official reportedly dubbed "worse than Watergate" in terms of widespread corruption in the department. District court judge William Bryant in November ordered Justice to pay Inslaw $6.1 million in damages.

Inslaw claims to have evidence suggesting that several unfriendly attempts by seemingly unrelated companies to take over the company between 1983 and 1986 each were orchestrated by Brian and his investment bankers, and were directly encouraged by Justice.

In a sworn affidavit, Hamilton states that Daniel Tessler was a relative of Alan Tessler, a senior partner in the New York law firm Shea and Gould. That firm handled mergers and acquisitions work for companies Dr. Brian was involved in, including Fairfax-based Hadron Inc., which had unsuccessfully offered to buy Inslaw in 1983.

On that occasion, just weeks before Justice launched the first of its contract disputes with Inslaw, then-Hadron chairman Dominick Laiti reportedly told Hamilton that his firm intended to become the leading vendor of law-enforcement and litigation software, and that a purchase of Inslaw would be crucial to that goal.

Laiti allegedly bragged of Hadron's political connections with Meese and told Hamilton: "We have ways of making you sell."

A knowledgeable source in New York City who was close to the situation last week told the Business Journal that 53rd Street Ventures knew about Hadron's offer to buy Inslaw, even though it was not publicly disclosed.

The source, who asked not to be named, had not seen Inslaw's petition but, after hearing specific passages read over the phone, said Hamilton's assertions of a link between Tessler's 1984 ultimatum and Hadron's 1983 offer were "not inaccurate."

Laiti, who no longer is employed by Hadron but remains on its board of directors, said in a telephone interview last week: "I have no idea who I called or didn't call in 1983." He also said he could not remember whether Hadron or Brian ever wanted to acquire Inslaw.

"To this day, I still don't know a thing about (the software)," he said.

Regarding the claim that he threatened Hamilton, Laiti said, "My God, I would never say anything like that."

Two separate court rulings stemming from Inslaw's now-resolved bankruptcy case have found that the Justice Department engaged in "trickery, fraud and deceit" in an effort to steal the software and drive Inslaw out of business.

Inslaw — which in 1982 won a $10-million contract to install PROMIS software in the larger Justice offices nationwide — now is asking that Attorney General Richard Thornburgh be compelled to launch an investigation of his department in light of the courts' findings of wrongdoing.

Backed by information reportedly gathered from more than 30 sources — only a few of whom are not named — Inslaw weaves a tale of an insidious conspiracy stretching from Washington to Wall Street, dating from the earliest days of the Reagan administration and continuing now through an alleged Justice Department cover-up.

Inslaw's new petition explicitly points the finger at Meese and his friend Dr. Brian, who today leads New York-based Infotechnology Inc., a publicly held investment company with stakes in about 20 companies, including Hadron and Washington-based United Press International.

In essence, Inslaw presents a "smoking gun" theory that independent counsel Jacob Stein never found when he investigated Meese in 1984 for undisclosed financial transactions between Dr. Brian, Meese's wife Ursula and Edwin Thomas, a former Meese aide.

Stein established that Ursula Meese had in 1981 purchased stock in a company controlled by Brian, using funds borrowed from Thomas, a friend of the family; he further established that, at about the same time, Brian had provided a $100,000 loan to Thomas to help him purchase a home in Washington, since Thomas was relocating to the capital to work for Meese, then President Reagan's counselor. In 1981 and 1982, Brian served in the White House and chaired a health care cost-reduction task force that reported to Meese.

Stein never concluded, however, that the transactions were linked to or would be an influence on Meese's duties as attorney general, which began in February 1985.

Inslaw's attorneys, who include one-time Attorney General Elliott Richardson, maintain that the transactions indicate the beginnings of a "conspiracy among friends of Attorney General Meese to take advantage of their friendship with him for the purpose of obtaining a lucrative contract for the automation of the Department's litigating divisions."

As early as 1980, Congress had published reports recommending that Justice take steps to vastly improve automation capabilities to increase departmental efficiency.

It was a goal Meese supported publicly as early as 1981 and which Justice pursued both through its procurement of PROMIS software and, in 1986, through its pursuit of "Project Eagle," a $212-million computer procurement.

According to Inslaw, Brian's plan was to gain control of Inslaw or its PROMIS software with assistance from the Justice Department and then use ties to Meese to win the Project Eagle contract as well. Inslaw's petition maintains that Brian pursued this plan years before Justice publicly disclosed plans to launch Project Eagle.

Project Eagle was awarded last year to Fairfax-based Tisoft Inc., a company in which Brian has no ownership stake or known affiliation, but which is for sale.


Meese


Hamilton

(See related story, page 5).

Meese, now a distinguished fellow at the Heritage Foundation in Washington, last week told the Business Journal he "never talked to Earl Brian about (Inslaw) in any way" and said he was not aware of the new petition filed by the software company.

"All of this was pretty much over with by the time I got to the Justice Department" Meese said. "I had no direct involvement with it. It was in the litigation stage when I arrived."

Previously published reports have said that Meese took time out from farewell ceremonies on his last day as attorney general to instruct his people not to cooperate with Nunn's investigation of the Inslaw case unless Inslaw lawyers were kept away from depositions of Justice personnel.

Meese told the Business Journal he may have discussed procedural issues regarding Inslaw with his people on that day, but that the details of what he reportedly said were false.

Inslaw claims the Justice Department "discussed in advance" and encouraged a Pennsylvania company's attempted hostile takeover of Inslaw in 1985: The petition names a former vice president of Systems and Computer Technology, the bidding firm, who allegedly said Justice officials "strongly hinted that Inslaw's contract disputes would be settled quickly" once a takeover was completed and Hamilton was ousted.

According to the petition, two other former SCT employees told Inslaw investigators that SCT executives also discussed the hostile bid for Inslaw with top officials at Allen and Co., a New York company that has acted as Brian's investment banker on numerous occasions. Documents filed with the U.S. Securities and Exchange Commission show that Allen and Co. subsequently invested about $5 million for a 7.8 percent stake in SCT.

According to other witnesses listed in the petition, Allen and Co. officials also had discussed fund-raising strategies with Hadron in 1983, shortly before that firm offered to buy Inslaw.

A key source in the Inslaw petition is Ronald LeGrand, who was the chief investigator for the Senate Governmental Affairs subcommittee under Sen. Sam Nunn. LeGrand conducted an investigation in the Inslaw matter, but Nunn dropped the effort after complaining publicly that Justice had been uncooperative with the investigation.

In April 1988, LeGrand — who has acquaintances in Justice from the days when he was employed by the Drug Enforcement Agency — reportedly told Bill and Nancy Hamilton that a "deep throat" senior-level Justice official told LeGrand that the Inslaw scandal was "a lot dirtier for the Department of Justice than Watergate was," and had compromised the agency "at every level."

Many of the details included in Inslaw's petition are similar or identical to those Inslaw presented to the public integrity office of Justice's criminal division in February 1988, but which allegedly never were investigated or acted upon. (Inslaw claims that as of last month, Justice had interviewed only one of the 30 individuals who spoke with Inslaw investigators and whose names Hamilton had passed onto Justice in 1988.)

Inslaw lists as co-conspirators Justice's PROMIS project manager, C. Madison Brewer, who once was an Inslaw employee until Hamilton fired him; and D. Lowell Jensen, a longtime Meese associate and then-assistant attorney general who, during the 1970s, was involved in the development of a software package that competed unsuccessfully with Inslaw's PROMIS in a State of California procurement.

Both the 1988 bankruptcy court ruling and last fall's federal appeals court ruling implicated Brewer, but not Jensen, who today is a federal judge in San Francisco. The courts did find that the "upper echelons" of Justice had a hand in the Inslaw scandal.

The Justice Department has had no comment on the Inslaw petition but must file a reply by Feb. 26 with the court. It has been widely speculated that Justice will appeal the November appeals court ruling awarding Inslaw $6.1 million in damages, though no such action has been taken as yet.

Brian and a number of other witnesses or alleged participants in the Inslaw matter could not be reached for comment.

Washington
BUSINESS JOURNAL

VOLUME 8, NUMBER 34 ONE DOLLAR WEEK OF JANUARY 15, 1990

After winning largest contract, founder puts Tisoft up for sale

Lockheed in chase for firm after $76-million contract

By HUNTLEY PATON

Tisoft Inc., the Northern Virginia high technology firm that last summer won the largest computer contract ever awarded by the Department of Justice, has been put on the auction block by its founder and single shareholder, Patrick Gallagher, Business Journal sources said.

Fairfax-based Tisoft won the Justice Department's "Project Eagle" procurement last June — a $76-million contract for automation of Justice's 40 largest offices in the country. With options, the contract is expected to be worth $212 million and, some sources believe, even more — as much as $800 million over a number of years if Justice decides to apply it to quasi-autonomous agencies, such as the Bureau of Prisons and others.

Tisoft has been for sale for more than a year, sources said. At first, Gallagher was seeking about $7 million for the company he founded in 1980. But after securing the lucrative contract with Justice, the price tag was upped to a reported $31 million or more.

Sources said Tisoft founder Gallagher is considering a sale for personal health reasons. The sources also said Tisoft has retained New Jersey-based investment banking firm Broadview Associates to negotiate with potential buyers.

Gilbert Mintz, a Broadview partner said to be handling the Tisoft sale, declined to be interviewed by the Business Journal.

Gallagher would neither confirm nor deny efforts to sell the company.

"That's not something we would want to discuss at this time," Gallagher said last week.

Defense giant Lockheed Corp. reportedly is a leading candidate to buy the firm. The California-based company has been negotiating with Broadview "off and on" since last summer, one knowledgeable source said.

Lockheed, which has been attempting to diversify beyond weapons systems procurements in the wake of anticipated slowdowns in defense spending, has pursued the automated data processing field in recent months, but has had little luck as yet, industry observers said.

Late last month, for example, Lockheed filed a protest over an $850-million Federal Aviation Administration contract that was awarded to AT&T on Dec. 21. Lockheed was a losing bidder on the job, which calls for the supply and support of office automation workstations in FAA offices nationwide.

A Lockheed vice president said to be spearheading the company's negotiations for Tisoft could not be reached for comment last week. Sources said Lockheed has shown signs of cold feet on the potential deal, for reasons that were not clear.

When Tisoft won the Project Eagle contract last year, three losing bidders protested the award. The protesters said Tisoft was not the lowest bidder and also maintained that Tisoft's claim to have Unisys as a maintenance subcontractor was false. Justice settled the disputes by paying the three companies a reported total sum of $2 million. Officials at those companies, who reportedly agreed to not discuss the matter as part of the settlement, could not be reached for comment.

Current negotiations for Tisoft aside, public records show that Gallagher has been anticipating and preparing for a major change in control at Tisoft since at least 1986.

Records at the Virginia State Corporation Commission in Richmond indicate that Gallagher twice filed amendments to the company's incorporation papers — first in January 1986 and again on March 31 of last year, less than two months before Tisoft won the Project Eagle contract.

In the first instance, Gallagher swapped his 100 percent ownership for new "class B" shares. At the same time, he created a "class A" stock that, if issued in its entirety, would account for 56 percent ownership. Gallagher's class B shares would then account for 44 percent ownership.

To date, none of the class A shares has been issued, which means Gallagher still owns all of the company.

In essence, the changes seem to reflect an effort to account for any dividends paid to shareholders, or rather, guarantee a portion of those dividends retroactively to any party that eventually becomes owner of the class A stock.

When Tisoft won the Project Eagle contract last year, three losing bidders protested the award.

The changes indicate that Gallagher, as the class B shareholder, would be entitled to the first $100,200 in Tisoft dividends each year before the class A shareholders received anything. After that, the class A shareholders would receive 56 cents of every dollar in dividends paid.

The restated articles of incorporation also state that "in the event of any liquidation, dissolution or winding up of the corporation, whether voluntary or involuntary," the class B shareholder, Gallagher, would would receive $30 a share, or about $3 million, before the class A shareholders received any payment.

Because the class A shares were not issued in ensuing years, the second amendment, made last year, discounts dividends paid to Gallagher since the 1986 reincorporation from the amount he would receive in the future — a move that preserves the 1986 financial guarantees made to the as-yet hypothetical class A shareholders.

ST. LOUIS POST-DISPATCH

WEDNESDAY, JANUARY 10, 1990

JAMES KILPATRICK

Trickery And Deceit At Justice Department

WASHINGTON

Two federal judges now have found something rotten at the Justice Department. They have found the ugly case of INSLAW Inc., and that case is beginning to smell to high heaven. The question is, what does Attorney General Dick Thornburgh propose to do about it?

The story is not complicated, and it is not pretty. It has to do with a young inventor, William Hamilton, who set out in 1973 to develop a computer software system that would increase the efficiency of federal prosecutors. He came up with PROMIS (Prosecutor's Management Information System). It worked well. Building on his invention, Hamilton greatly enhanced the software program. In 1982 he won a three-year contract with the Department of Justice to install it in 20 U.S. attorneys' offices. He fulfilled the contract in February 1985. Simultaneously he went into a Chapter 11 bankruptcy.

What had gone wrong? A great deal. From November 1974 to April 1975, Hamilton had employed C. Madison Brewer as his general counsel. It was a bad relationship. Hamilton thought Brewer was doing a poor job; Brewer thought Hamilton was "crazy." In the end, Brewer was fired.

The contract with the Justice Department was virtually the sole source of INSLAW's income. And who wound up at the department as deputy attorney general, assigned to manage the PROMIS project? C. Madison Brewer. In 1986 Hamilton brought an adversary proceeding in the District of Columbia Bankruptcy Court, alleging Brewer had led a conspiracy within the department to drive him out of business.

Bankruptcy Judge George F. Bason Jr. held hearings, and on Sept. 28, 1987, handed down a stunning decision. The court upheld Hamilton's charges right down the line. Bason found that Brewer had worked with Justice Department colleagues to achieve the "ruination" of INSLAW. They had held up payments on the contract in bad faith and in "wanton disregard of the law." The department "took, converted, stole INSLAW's enhanced PROMIS by trickery, fraud and deceit." Brewer and his associates were "utterly hostile" to Hamilton.

After the Chapter 11 filing, the department "willfully sought to cause the conversion of the petition to a Chapter 7 liquidation without justification and by improper means."

Bason has entered a judgment against the department of $6.8 million plus legal fees. The department appealed. Three months after he dropped his blockbuster, Bason was denied reappointment as a bankruptcy judge. Let us draw what inferences we may.

In the summer of 1988, Sen. Sam Nunn, D-Ga., tried to investigate the INSLAW affair. He ran into a stone wall. Nunn told a Justice spokesman that "you have had us jumping through one hoop after another." The spokesman, Assistant Attorney General John R. Bolton, scoffed at Bason's opinion. He was certain it would be reversed.

On Nov. 22, Senior U.S. District Judge William Bryant came to the same conclusion Bason had reached, and said the findings set forth by the bankruptcy court "will not be disturbed."

What now, Dick Thornburgh? Is Hamilton still "crazy"? Or were your own people terribly in the wrong?

EDITORIALS
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COMMENTARY

STEPHEN GREEN

Software hardball at Justice?

Attorney General Dick Thornburgh ought to be concerned that his Justice Department has been found guilty of ripping off a small computer-software company and of trying to put the firm out of business.

Mr. Thornburgh's troubling refusal to agree to a complete investigation of the gross malfeasance against the company, INSLAW Inc. of Washington, should alarm all who believe the Justice Department must maintain a reputation for fairness and veracity.

That sufficient integrity has been lacking has been made evident by the rulings of two judges. A federal bankruptcy judge and a U.S. District Court judge have found that the Justice Department shockingly tried to steal the rights to INSLAW's software. The firm has been awarded a $6.1 million verdict and may collect millions of dollars more in punitive damages.

Richard Thornburgh

INSLAW, which developed a computer program to help track criminal defendants, had received a $10 million Justice Department contract to put the software in federal prosecutors' offices around the country. When the government suddenly began withholding payments, the company was forced to reorganize in bankruptcy court.

Bankruptcy Judge George Bason found that the Justice Department was guilty of trying to steal the rights to the software by "trickery, fraud and deceit." He found that the department official responsible for supervising the contract, D. Madison Brewer, was "consumed by hatred" for the president of INSLAW.

see GREEN, page F4

Stephen Green, managing editor of the Copley News Service Washington bureau, is a nationally syndicated columnist.

GREEN

From page F1

Mr. Brewer previously had worked for INSLAW and had been fired for cause.

The department reprehensibly tried to discredit the findings of Mr. Bason. After the judge refused a Justice Department request to liquidate INSLAW, he was not reappointed to the bankruptcy bench. But the department could not dismiss his ruling.

U.S. District Court Judge William Bryant upheld Mr. Bason's findings that Justice officials from the highest echelons on down showed "contempt for both the law and any principle of fair dealing." Furthermore, Mr. Bryant ruled that the Justice Department "acted willfully and fraudulently to obtain property that it was not entitled to under the contract."

Clearly, a thorough investigation of the department's conduct is warranted. In court documents, INSLAW has contended that close associates of former Attorney General Edwin Meese initiated the malfeasance in an effort to steal the software for their own financial benefits. But the Justice Department has been stonewalling efforts to determine precisely what occurred. The department has rejected a request for a special prosecutor and also has refused to cooperate with congressional requests for information about the scandal.

The Justice Department maintains that its Public Integrity Section could find no reason to proceed with a criminal investigation. The claim is highly suspect. According to court documents, the Public Integrity Section failed to interview nearly all the key witnesses.

Now INSLAW and its lawyer, former Attorney General Elliot Richardson, have asked the District Court to require the Justice Department to begin a "fair and thorough" investigation by an "attorney who has had no previous involvement in the case."

Inasmuch as the Justice Department has failed to act with propriety in the matter of INSLAW, it appears that the court will have to step in for an impartial investigation to proceed.

As Mr. Richardson noted in a letter to Mr. Thornburgh, the Justice Department seems to have been more interested in prevailing in the bankruptcy case against INSLAW than in uncovering "facts that might force it to confess error."

Worse, the department's reprehensible conduct gives the impression that it attempts to protect those guilty of the transgressions against INSLAW. If the department is involved in covering up crimes of its own employees, it has lost all claim to public confidence.

The inexcusable malfeasance in the INSLAW case has tainted the reputation of the Justice Department, one federal agency that should be squeaky clean. If Mr. Thornburgh continues to block an unbiased investigation, both the courts and Congress ought to take whatever action is necessary to rectify the INSLAW scandal.

The Washington Post

SUNDAY, DECEMBER 24, 1989 K

A Big Win for INSLAW

THE DAVID and Goliath tale of one small company's fight with the federal government has been resolved by a federal court in Washington. INSLAW, a local computer software company with young owners and not much in assets, was vindicated in a dispute with the Justice Department. Charges against the government were so appalling as to be suspect. But first a bankruptcy judge and now U.S. District Court Judge William Bryant have found them to be true. Persistence and a refusal to cave in to great pressure—not to say intimidation—have resulted in a multi-million-dollar verdict for the company.

INSLAW developed softwear that is widely used by federal prosecutors to track the progress of cases and compile information about caseloads, dispositions and the characteristics of offenders. The company entered into a contract with the Department of Justice to install its system in prosecutors' offices around the country, but within months the rights of the parties were in dispute and the government began to withhold payments. The contract represented 70 percent of INSLAW's business, and as a result of the continuing conflict, the company was soon forced to reorganize in bankruptcy. INSLAW's owners charged the Justice Department with extreme bias because C. Madison Brewer, the man designated to supervise the contract, had once been employed by INSLAW's predecessor company and was forced out. How Mr. Brewer came to be put in charge of the softwear contract is not known. But U.S. Bankruptcy Judge George Bason found that he was "consumed by hatred for and intense desire for revenge against" INSLAW's president.

Judge Bason did not mince words. He found that the department "took, converted, stole" INSLAW's property "by trickery, fraud and deceit." And he found that department officials at the highest level ignored charges of ethical impropriety, dealt with INSLAW in bad faith and demonstrated "contempt for both the law and any principle of fair dealing." After he made these findings, but before his opinion was published, Judge Bason was notified that he would not be appointed to another 14-year term on the bankruptcy bench. That dismissal was not subject to review. But Judge Bason's opinion was. He must be gratified that it was so soundly endorsed by Judge Bryant, who ordered the department to pay INSLAW $6.1 million in damages—punitive damages may be added later—and all the legal fees the company has paid in its long struggle to obtain justice.

BARRON'S

NATIONAL BUSINESS AND FINANCIAL WEEKLY DECEMBER 4, 1989 $3.00

JUSTICE IS DONE *Maggie Mahar*
A federal district court upholds a multimillion-dollar award against the Department of Justice and in favor of INSLAW, a small software maker. Shades of Ed Meese.

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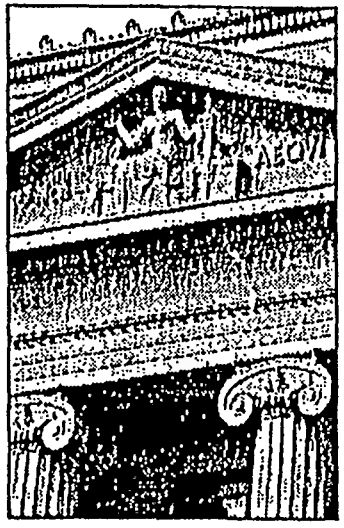

Mary Kate

Justice Is Done

Federal Court Upholds INSLAW's Award

By MAGGIE MAHAR

IN April 1988, *Barron's* told the story of INSLAW, a small software company that fought the Justice Department—and won.

Bill Hamilton, INSLAW's 42-year-old founder, had spent his life's savings developing the Prosecutor's Management Information System (PROMIS) when, in 1982, he sold his software to the U.S. Department of Justice. PROMIS was going to be installed in U.S. attorneys' offices nationwide. It was a $10 million contract. Hamilton was jubilant. Then, something went sour. Justice began withholding payments. Contract disputes multiplied. Hamilton wasn't sure what was happening or why. By 1985, INSLAW was in financial shambles, and Hamilton found himself in federal bankruptcy court. There, a judge handed down an astonishing ruling.

Judge George Bason found that the Justice Department had purposefully propelled INSLAW into bankruptcy in an effort to steal its PROMIS software through "trickery, deceit and fraud." On Feb. 2, 1988, Bason ordered the Department of Justice to pay INSLAW about $6.8 million in licensing fees and roughly $1 million in legal costs. He postponed a decision on punitive damages—which could run as high as $5 million. Justice appealed the decision. Now, almost two years later, the federal district court has ruled.

In a sharply worded 44-page opinion, Judge William B. Bryant affirmed Bason's decision on virtually every count. Not only did Bryant confirm that the Department of Justice had attempted to steal the software from a small, private company, acting "willfully and fraudulently to obtain property that it was not entitled to under the contract," but Bryant added: "While the focus of the review must be on the actions taken by the Justice Department once INSLAW filed its petition for bankruptcy ... [what] is strikingly apparent from the testimony and depositions of key witnesses and many documents is that INSLAW performed its contract in a hostile environment that extended from the higher echelons of the Justice Department...."

Two years ago, not everyone believed Bill Hamilton's tale of a conspiracy reaching to the highest levels of the U.S. Department of Justice, even after Judge Bason handed down his opinion. Hamilton's story seemed incredible, and a campaign to discredit INSLAW—and Bason—began.

Skeptics accused Hamilton of "paranoia." One press report even suggested that INSLAW's collapse stemmed largely from Hamilton's lackluster management.

As for Bason, he was dismissed from the bench. In November 1987, Bason rejected a Justice Department motion to liquidate INSLAW. Not quite one month later, he learned he would not be reappointed by the U.S. Court of Appeals for the District of Columbia. In the preceding four years, only four of 136 federal bankruptcy judges seeking reappointment had been turned down. The judge was replaced by S. Martin Teel Jr., one of the Justice Department attorneys who had unsuccessfully argued the INSLAW case before Bason.

'Adding insult to injury, when Justice Department attorneys appealed Bason's decision,

Continued on Page 54

Janet Fries

Bill Hamilton

they cited his failure to be reappointed, questioned his competence, and suggested that the decision not to reappoint him might have tainted his judgment in the case.

In his decision, Bryant vindicates Bason in unequivocal terms. "The cold record adequately suppports his findings under any standard of review. Accordingly, the findings will not be disturbed."

As to the charge that Bason was biased, Bryant rejects it out of hand. "Although no written findings had been filed by the time Judge Bason learned that he would not be reappointed, the die had been cast. . . . Judge Bason made his oral ruling on June 12, 1987, and followed with a memorandum opinion on July 20, 1987. A bench ruling on Justice's liability in the main adversary proceeding was announced on Sept. 28, 1987, more than 3½ months before the judge learned that he would not be reappointed. Government liability had already been assessed in no uncertain terms. The only untried part of the case that remained involved damages."

Thus, first Judge Bason had ruled, then the decision was made to remove him from the bench. In its appeal, Justice had tried to reverse the sequence and, in the process, reverse cause and effect as well.

Bryant affirmed Bason's award of damages, recalculating the compensatory award only to subtract the cost of a service that INSLAW never had the opportunity to perform. This shaved $655,200 off that portion of the bill, trimming it to $6.1 million. But the federal district judge confirmed the order that the Justice Deparment should pay INSLAW's attorney's fees—adding another $1.2 million to the government's tab.

Punitive damages are still pending. INSLAW is asking for $5 million, plus $25 million-$100 million in "consequential" damages "to make up for lost business after Justice drove us into the ditch," Hamilton explains. INSLAW is now in the black, successfully filling a contract for IBM, but during the months the company was under water, it lost millions, including an earlier contract with IBM, Hamilton claims.

The investigation continues. In his opinion, Judge Bryant made it clear that while he must limit his review to what Justice did after INSLAW filed its petition for bankruptcy, he did find "striking" evidence that the pattern of harassment flowed from "the higher echelons" of the department. Bill Hamilton still claims that former U.S. Attorney General Edwin Meese was involved, and at least two congressional committees have been looking into his charges.

In September, the staff of the Senate's Permanent Subcommittee on Investigations issued an 80-page report saying, in essence, that it had been hamstrung and reached a dead-end. Charging that "Justice refused to cooperate with the subcommittee's attempts to carry out its legitimate oversight responsibilities," the staff reported that it found no proof of INSLAW's allegations of a conspiracy.

But the report did spell out how it was blocked, observing that the Department's "insistence on a Departmental presence at employee interviews and depositions served, wittingly or unwittingly, to intimidate employees who otherwise may have cooperated with the Staff's investigation. The staff learned through various channels of a number of Justice employees who desired to speak to the subcommittee, but who chose not to out of fear for their jobs. In one instance, a department employee was reportedly willing to talk to the staff, but wouldn't testify in a deposition if a Department of Justice attorney was present.

"The Department apparently ignored its own policy in this case. It did so, in the Staff's opinion, to protect its own interests in civil litigation and at the expense, not only of the taxpayers' money, but also of the rights and interests of the very individuals it was purporting to represent."

Finally, the report noted that, while no proof was found that Meese was involved in the INSLAW affair, he certainly took an inordinate interest in the investigation. On the day before he left office, Meese took time out from farewells and office-cleaning to call an 8:30 a.m. meeting and instruct the Justice Department counsel and witnesses to refuse to participate in the INSLAW depositions scheduled for that day unless the subcommittee agreed to two conditions: 1) that counsel for INSLAW not be allowed in the deposition rooms and 2) that the witness receive a copy of the final deposition transcript.

At a hearing that day, Sen. Sam Nunn, the committee's chairman, expressed frustration with the department's lack of

Continued on Next Page

Thomas Wolf

Judge George Bason

cooperation. "It looks like you have had us jumping through one hoop after another and frankly, we are getting a little tired of it. . . . We have had one problem after another and we are right now back where we were several months ago." Eventually, Nunn's committee gave up and issued its report.

But the story may not be over. In court, Hamilton will pursue his fight. In the House, the Judiciary Committee, chaired by Rep. Jack Brooks, has announced a separate investigation into INSLAW and a related Justice Department computer procurement case. Perhaps an intrepid House investigator—or another fearless judge—will manage to break through Justice's self-protective shield, interview the moles who wanted to talk privately to the Senate subcommittee, and solve the mystery of INSLAW. Bill Hamilton has put his company back on its feet again. Judge Bason is practicing law again. But they'd both still like to know—who dun it and why. ■

BUSINESS

Judge Rules For Inslaw On Appeal

Justice Department Harassed Company

By Mark Potts
Washington Post Staff Writer

A federal district judge yesterday upheld a bankruptcy court's ruling that the Department of Justice improperly harassed a local computer software firm and tried to drive it out of business.

Senior U.S. District Judge William B. Bryant of Washington ruled that the department "acted willfully and fraudulently" to take and keep software that the company, Inslaw Inc., had developed under contract to the department to track cases in U.S. attorney's offices.

His strongly worded opinion rejected virtually every argument made by the Justice Department in its appeal of the bankruptcy court's 1987 ruling.

Bryant also ruled that the department had violated bankruptcy law by continuing to harass Inslaw after the company filed for bankruptcy protection and that it had improperly attempted to force the company to switch its bankruptcy filing from a Chapter 11 reorganization to a Chapter 7 liquidation.

"Instead of following the orderly procedures established by the bankruptcy code for resolving its dispute with Inslaw . . . [Justice] pursued a course of self-help," Bryant wrote in his 46-page opinion.

The only significant change Bryant made in the earlier opinion by then-Bankruptcy Judge George F. Bason Jr. was to recalculate the compensatory damages awarded to Inslaw, reducing them to $6.1 million from $6.8 million because Inslaw had not performed a service that was included in the original award. He upheld the bankruptcy court's order that the government pay Inslaw's attorneys' fees in the case. Punitive damages in the case have yet to be decided.

Amy Brown, a spokeswoman for the Justice Department, said the department was "reviewing the opinion and studying our options."

Bryant's ruling is the latest in a string of legal victories for Inslaw, a small District-based company that has been battling the Justice Department in court for four years.

Bason ruled in 1987 that the Justice Department "took, converted, stole" Inslaw's software "by trickery, fraud and deceit." Bason found that several Justice Department employees—including C. Madison Brewer, a former Inslaw employee who administered the Inslaw contract for the department—had shown bias against the company.

Two months ago, the staff of a Senate investigative subcommittee issued a report concluding that Justice Department officials "exercised poor judgment" and showed personal bias in dealing with Inslaw. At least one other congressional investigation into the Justice Department's dealings with Inslaw is underway.

William Hamilton, Inslaw's chairman, said of yesterday's decision: "We're very pleased by it. I think the fact that the district court decided

See INSLAW, B21, Col. 1

Judge Upholds Ruling Against Justice Dept.

INSLAW, From B17

that . . . 'the cold record' of fact by itself supports Judge Bason's decision is particularly telling."

Inslaw filed for protection from its creditors under Chapter 11 of the federal bankruptcy law in February 1985, after the Justice Department stopped paying the company in a dispute over Inslaw's performance on the contract and whether the department or the company owned the software. Inslaw filed suit against the department a year later.

In his ruling yesterday, Bryant said the Justice Department improperly continued to use and distribute the software after Inslaw had been dropped as a contractor. "The court is drawn to the same conclusion reached by the bankruptcy court," he wrote. "The government acted willfully and fraudulently to obtain property that it was not entitled to under the contract."

Without dealing specifically with the charges of bias against the company, Bryant wrote: "What is strikingly apparent from the testimony and depositions of key witnesses and many documents is that Inslaw performed its contract in a hostile environment that extended from the higher echelons of the Justice Department to the officials who had the day-to-day responsibility for supervising its work."

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William A. Hamilton, President

MEMORANDUM

DATE: March 29, 1990

TO: The Record

FROM: WAH William A. Hamilton

SUBJECT: The Justice Department Failed To Develop A Security Plan For The Future Systems Being Acquired Under Project EAGLE And Does Not Know The Identity Of The Future New Owners Of The EAGLE Contractor Even Though Project EAGLE Is The Largest Computer Project In The Department's History And Will Involve Extremely Sensitive Criminal Investigation And Criminal And Civil Litigation Data

The Meese Justice Department launched the largest procurement in the history of the Department when it chartered the Uniform Office Automation and Case Management Project, code-named Project EAGLE, in December 1985.

The Thornburgh Justice Department awarded the EAGLE contract in June 1989 to a small, Northern Virginia contractor, Tisoft, Inc.

Several months later, in September 1989, the General Accounting Office (GAO) published a report entitled Justice Automation: Security Risk Analyses and Plans for Project EAGLE Not Yet Prepared.

GAO noted that although the initial contract award only covered the Criminal and Tax Divisions and the 93 U.S. Attorneys' Offices, "other litigating and non-litigating organizations will be required to either purchase EAGLE hardware and software or acquire systems that are compatible with Project EAGLE."

GAO also warned that the EAGLE systems "will contain sensitive information...including the names of defendants, witnesses, informants, and undercover law enforcement officials" but that Justice Department officials "had not intended to conduct risk analyses or prepare security plans until the systems were installed and operating."

The security risk resulting from the failure of Justice Department officials to plan for the security of the sensitive data that will be stored in the EAGLE computers has been compounded by the planned sale of Tisoft, Inc. to unidentified new owners, and the reported decision by the Justice Department to expand the Tisoft EAGLE contract to include the FBI, the Drug Enforcement Administration, the U.S. Marshals, the Bureau of Prisons, and the Immigration and Naturalization Service.

Soon after Tisoft won the EAGLE contract award in June 1989, it began circulating an Offering Memorandum for the sale of the Company. Upon information and belief, the Offering Memorandum states that the Justice Department has already determined to exercise options to expand the EAGLE contract to all of the aforementioned semi-autonomous Justice Department bureaus, increasing the value of the contract from the June 1989 initial award amount of $76 million to a level that Tisoft reportedly describes as follows: "...conservatively, half a billion to $800 million."

Tisoft has been in the process of selling the controlling interest in the Company to unidentified parties since January 1986 when the Justice Department awarded Tisoft a $30 million office automation contract for the Civil Division. Justice has publicly pointed to the January 1986 contract as the model for the EAGLE office automation work. In January 1986, Tisoft amended its Articles of Incorporation to provide for the creation of a new Class A common stock which, once issued, would constitute 54% of the ownership of the Company; and for the exchange of 100% of the then outstanding common stock, owned by Patrick R. Gallagher, the Tisoft founder and CEO, for a new Class B common stock, representing 46% of the total common stock (the sum of the two new classes of common, Class A and Class B).

Later, on March 30, 1989, just two months before Tisoft won the EAGLE contract that Tisoft values as high as $800 million, Tisoft again amended its Articles of Incorporation. This time, Tisoft referred to the fact that an "extraordinary" delay had occurred in the issuance of the new Class A majority ownership stock since the January 1986 authorization amendment to the Articles of Incorporation. Apparently to compensate the future Class A owner or owners for the delay, Mr. Gallagher agreed in the March 30, 1989 Amendment to credit dividends paid to him during the period of delay against money that Tisoft might otherwise owe Mr. Gallagher once the Class A owner or owners are in place.

According to Dun and Bradstreet, Tisoft paid substantial

dividends to Mr. Gallagher during these years of delay, including $400,000 in 1987, and $1.8 million in 1988.

Although the March 1986 Amendment did not offer any explanation about the "extraordinary" delay that Tisoft had experienced since its January 1986 Amendment, the delay coincided with the following events:

- In May 1986, Justice issued the RFP for Project EAGLE, the procurement which Justice Department officials later stated was modelled after the January 1986 contract with Tisoft. The EAGLE RFP stated that case management software would be installed on each EAGLE computer by the 13th month of the contract; that the case management software would account for most of the capacity of each EAGLE computer; and that Justice did not have the case management software and did not plan to have the EAGLE vendor develop it.

- That same month, a Pennsylvania-based computer services company, Systems and Computer Technology, Inc., initiated a hostile takeover bid for INSLAW by offering several million dollars in cash to INSLAW's creditors. SCT officials had planned the hostile takeover bid in separate meetings during the fall of 1985 with unidentified officials of the "Meese" Justice Department, and with Herbert A. Allen, Jr., the Chief Executive Officer of Allen and Company, the Wall Street Investment Bank. Subsequent to the fall 1985 meeting between Herbert A. Allen, Jr. and SCT, Allen and Company purchased 7.8% of SCT for about $5 million. Since at least September 1983, Allen and Company had been involved behind the scenes in the effort by Dr. Earl Brian, a long-time friend of Edwin Meese, to acquire control of the PROMIS software for contracts with the Justice Department.

- In August 1986, when INSLAW convinced the Unsecured Creditors Committee to reject the SCT hostile takeover bid, the Justice Department amended the EAGLE RFP to require that all EAGLE computers be equipped with

features that would make possible the installation of the PROMIS case management software, but initially dissembled in a written reply to questions from EAGLE bidders about the connection between the newly-mandated technical features and the PROMIS software. At about the same time, Deputy Attorney General Arnold Burns wrote to INSLAW offering an early and, by implication, a favorable resolution of the contract disputes that had propelled INSLAW into bankruptcy on the condition that INSLAW abandon its claim to license fees from the Justice Department's for its use of PROMIS.

- In October 1986, Deputy Attorney General Burns [1] met with a senior partner in the law firm then representing INSLAW to complain about the partner in charge of the INSLAW litigation against Justice. The following week, the firm made a decision to fire that 10-year member of the firm. By January 1987, the law firm had demanded authority from INSLAW to settle the case with Justice on terms that would have allowed Justice to use the PROMIS software without paying license fees to INSLAW. INSLAW subsequently obtained new counsel and litigated and won the case against Justice.

In June 1989, Justice awarded the EAGLE contract to Tisoft, having failed to acquire control of PROMIS either through the machinations of private sector friends of Attorney General Meese or through direct Justice Department pressure on INSLAW. Justice,

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[1] Victor Abrunzo, formerly Assistant U.S. Trustee for the Southern District of New York, told INSLAW in December 1987 that Arnold Burns, while still in private practice in New York City, had arranged for Ken Rosen, a former colleague of Abrunzo's in the U.S. Trustee's Office, to be hired by an INSLAW creditor as soon as INSLAW filed for bankruptcy protection in February 1985 for the purpose of assisting the Justice Department in its plan to force INSLAW's liquidation. Rosen had served as an associate in the Manhattan law firm founded and headed by Burns until shortly before the INSLAW bankruptcy. Abrunzo admitted these statements in subsequent deposition testimony but claimed that he had just been kidding.

therefore, awarded the EAGLE contract without the case management software necessary to make productive use of most of the capacity of each EAGLE computer.

To ease this dilemma, Justice publicly began to portray EAGLE exclusively in terms of Uniform Office Automation, the junior of the two components of EAGLE. On March 2, 1989, Deputy Attorney General Stephen Colgate, the official responsible for Project EAGLE, testified before Congress about EAGLE. In response to a question from Congressman Early, Colgate appeared to deny any connection between Project EAGLE and Uniform Case Management. Congressman Early: "Is this departmental case management system being done through AMICUS and Project EAGLE? Mr. Colgate: "No, Sir. The AMICUS and Project EAGLE is a uniform office automation system." (Hearings before Subcommittee of House Appropriations Subcommittee on Justice, p. 637.)

Similarly, the September 1989 GAO report on EAGLE describes EAGLE as "a Department of Justice project intended to supply office automation systems to its lawyers, managers, secretaries, and other employees."

In August 1989, however, the Justice Department privately communicated in writing to the General Services Administration (GSA) about EAGLE. INSLAW recently obtained a copy of this correspondence under the Freedom of Information Act (FOIA). Justice told GSA that Justice would need to buy $4 million worth of new computers to continue running the PROMIS software in the 42 largest U.S. Attorneys' Offices because the Prime computers on which PROMIS was then installed in those offices had become obsolete. Justice once again confirmed that case management software will be installed on the EAGLE computers. Justice estimated that it will take three years to develop and install the case management software on the new EAGLE computers being acquired by the same U.S. Attorneys' Offices. As noted earlier, Justice had earlier forecasted, in the EAGLE RFP, the development and installation of the case management software by the 13th month.

The effort by Justice Department officials in 1989 to dissemble to the Congress and to GAO about EAGLE occurred in the following context:

- In January 1988, the U.S. Bankruptcy Court ruled that Justice Department officials "took, converted, stole" the PROMIS software "through trickery, fraud and deceit" and then tried to force INSLAW's liquidation "through unlawful

means and without justification."

- The Justice Department launched the largest and one of the most sensitive procurements in its history with the obvious intent of hijacking the main software needed for the EAGLE computers, i.e. the PROMIS case management software, from INSLAW.

- The Justice Department failed to develop a timely security plan to safeguard the sensitive investigative and litigative data to be stored in the EAGLE computers.

- The Justice Department failed to consider security when it awarded the EAGLE contract to a small company whose owners are in the midst of an effort to sell out.

- One of the principal private sector persons with whom Justice was apparently colluding for the purpose of acquiring the PROMIS software for Project EAGLE for use by the FBI, DEA, U.S. Marshals, U.S. Attorneys, Bureau of Prisons, the Immigration and Naturalization Service, and the seven legal divisions is Herbert A. Allen, Jr. As reported in the book Indecent Exposure by former Wall Street Journal reporter David McClintick, Herbert A. Allen, Jr. once told the New York Times: "We trade every day with hustlers, deal makers, shysters, con men...That's the way business get started. That's the way this country was built."

Epilogue

In the September 1989 report, GAO stated that Justice Department officials explained their failure to conduct a risk analysis and to develop a security plan for Project EAGLE on the basis that Justice did not know what computer systems architecture it would be acquiring until it awarded the EAGLE contract in June 1989, and resolved bidder protests about the award. GAO said that Justice officials acknowledged that the award and subsequent settlement of bidder protests had established the systems architecture for EAGLE, and had made it possible for Justice to prepare the security plan.

Upon information and belief, however, Justice has radically altered the systems architecture since GAO published its September 1989 report. Tisoft bid Data General Eclipse series mini-computers with the proprietary AOS operating system and Network Systems Corporation communications equipment.

Upon information and belief, after awarding EAGLE to Tisoft, Justice directed Tisoft to substitute Data General's Avion-series of RISC (Reduced Instruction Set Computers), AT&T's UNIX operating system, and Ethernet communications. This is a radical change in the type of computer, the type of operating system and communications, and in overall systems architecture.

Network Systems Corporation filed suit against Tisoft in U.S. District Court in Eastern Virginia for dropping Network Systems Corporation as a supplier under EAGLE. Tisoft allegedly won EAGLE, in part, based on its alliance with Network Systems Corporation.

Upon information and belief, Justice had awarded the EAGLE contract to Tisoft in June 1989 even though Tisoft was the high bidder. During the bid protests before GSBCA (General Services Board of Contract Appeals), Justice explained the decision in terms of the superior management plan and technical offering from Tisoft. Tisoft's bid was reportedly $28 million higher than the low bid by Oracle Computer Systems, which bid UNIX-based computers with Ethernet communications. The $28 million price differential was on the initial $76 million contract award alone. That is the equivalent of a $500 million price differential on an $800 million project.

Upon information and belief, Justice and/or Tisoft came forward with $2 million to settle the protests by the three unsuccessful finalists, after it was disclosed that the UNISYS Corporation had declined to accept a subcontract from Tisoft for third-party hardware maintenance and that Justice had awarded a significant point advantage to Tisfot for its superior management plan based on Tisoft's now-defunct plan to use UNISYS.

Upon information and belief, the superior rating for the technical offering was based on the software and communications architecture which Justice has since directed Tisoft to abandon in favor of the new AVION RISC computers with UNIX and Ethernet.

Finally, on January 30, 1990, the Justice Department's Land and Natural Resources Division issued a Request for Proposals for a new case management software system that can later be migrated

to the EAGLE computers. According to an official answer published by the Justice Department to questions from bidders: "The Land Division has concluded that PROMIS experience is one of the most critical factors in developing the new system." Once again, the Justice Department, in its Land Division RFP, has reverted to its original EAGLE RFP plan to develop the case management software within 12 months of contract award. This time, instead of stealing the PROMIS software, Justice appears intent on stealing the proprietary PROMIS know-how.

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William A. Hamilton, President

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TUESDAY, DECEMBER 26, 1989

INSLAW, Inc., citing evidence obtained from interviews with 30 witnesses, today filed suit in United States District Court for the District of Columbia seeking an Order to compel Attorney General Dick Thornburgh and the U.S. Department of Justice (DOJ) to conduct a fair and thorough investigation of malfeasance against INSLAW by officials of DOJ itself.

The suit, filed on INSLAW's behalf by Counsel Elliot L. Richardson and William E. Jackson of Milbank, Tweed, Hadley and McCloy, and co-Counsel Charles R. Work of McDermott, Will and Emery, states that the Attorney General and DOJ have a clear "duty to enforce the law as well as a duty to be fair to civil litigants," but that Attorney General Thornburgh and DOJ have "failed and refused to investigate" the malfeasance.

The malfeasance in question is the theft by DOJ officials of INSLAW's proprietary PROMIS case management software "through trickery, fraud and deceit" and the DOJ conspiracy to drive INSLAW out of business "without justification and by improper means." This malfeasance has already been found by one federal court (U.S. Bankruptcy Judge George F. Bason, Jr., in January 1988 following three weeks of trial in 1987), and recently affirmed by a second federal court on appeal (Senior U.S. District Judge William Bryant on November 22, 1989).

In February 1988, the month after the U.S. Bankruptcy Court issued its Findings of Fact, William A. and Nancy B. Hamilton, founders and principal owners of INSLAW, submitted a memorandum to DOJ's Criminal Division outlining their hypothesis for the motivation of the malfeasance and asking for the appointment of an Independent Counsel to conduct a full investigation.

The Hamiltons' hypothesis is that private sector friends of Attorney General Edwin Meese, including a former Meese colleague in Governor Ronald Reagan's California cabinet, sought to exploit their friendship with Meese to obtain a "massive sweetheart contract" for one of their companies, a contract to install INSLAW's PROMIS case management software on new computers in virtually every office of DOJ.

In May 1988, DOJ's Criminal Division informed INSLAW that the appointment of an Independent Counsel was not warranted, but that it would itself investigate aspects of the allegations. A year later, on July 18, 1989, DOJ's Criminal Division informed INSLAW that it had closed its investigation "due to lack of evidence of criminality."

As far as INSLAW has been able to determine, however, DOJ never interviewed 29 of the 30 witnesses whose testimony INSLAW has summarized in the new lawsuit. The one witness who was interviewed, a New York State Civil Court Judge, has told INSLAW that the DOJ effort to force INSLAW into liquidation in 1985 was part of a larger "conspiracy to get the INSLAW software."

Another witness cited in the INSLAW pleadings is Mr. Ronald LeGrand. While Chief Investigator of the U.S. Senate Judiciary Committee, LeGrand learned from a trusted source, whom he describes as a senior DOJ official with a title, that the Criminal Division was the nerve center of much of the malfeasance against INSLAW.

According to LeGrand's source, D. Lowell Jensen, a long time confidant of Meese, who served at DOJ successively as Assistant Attorney General for the Criminal Division, Associate Attorney General, and Deputy Attorney General, engineered the effort to drive INSLAW out of business and give DOJ's case management software business to political friends; Jensen relied upon two of the most senior officials in DOJ's Criminal Division in implementing this scheme. LeGrand's source has also alleged that "the INSLAW case is a lot dirtier for the Department of Justice than Watergate was, both in its breadth and in its depth," and that the "Justice Department has been compromised on the INSLAW case at every level."

According to LeGrand, DOJ has made no attempt to learn the identity of his source. In May 1989, INSLAW Counsel Elliot L. Richardson sent a letter (Exhibit C to the INSLAW pleadings) to Attorney General Thornburgh summarizing some of the more important evidence and leads, developed in INSLAW's own investigation, and disclosing the identity of LeGrand and the content of the information from LeGrand's trusted source.

The letter to the Attorney General drew no response. Furthermore, Mr. Richardson's request for a meeting with the Attorney General was refused.

The INSLAW lawsuit seeks a Writ of Mandamus from the U.S. District Court to compel a fair and thorough investigation under the direction of a federal prosecutor not already tainted by the INSLAW scandal, who would be required to report to the Court on both the progress and the final results of the investigation.

Anticipating DOJ objections that such a Court Order would usurp DOJ's "prosecutorial discretion," the legal memorandum, filed as part of the lawsuit, states as follows: "Where the failure to perform a prosecutorial duty is the consequence not of legitimate discretion but of discrimination, conflict of interest, obstruction of justice, or sheer neglect, the Court Order -- far from usurping an executive function -- merely requires the function to be carried out."

Illegally appropriated copies of INSLAW's PROMIS software are installed on computers in each of the 42 largest U.S. Attorney's Offices to help manage criminal prosecutions, civil litigation, and legal process debt collection work.

Meese and Jensen launched the largest procurement in DOJ history soon after Meese became Attorney General. It is known as the Uniform Office Automation and Case Management Project, and code-named Project Eagle. DOJ officials have testified that Eagle is a $200 million procurement. The price could approach one billion dollars, however, if DOJ exercises options in the procurement to extend Eagle to the nationwide offices of DOJ's semi-autonomous bureaus.

According to one of the witnesses cited in the INSLAW suit, Meese, during a meeting at the White House in early 1981, disclosed plans to have Jensen spearhead a massive DOJ procurement to install the PROMIS case management software in virtually every DOJ office including the nationwide offices of DOJ's semi-autonomous bureaus such as the Drug Enforcement Administration, the U.S. Marshal's Service, and the Immigration and Naturalization Service.

COPY

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

INSLAW, INC.,	:	
Petitioner,	:	
- against -	:	89 Civ. ____
DICK THORNBURGH, as Attorney General of the United States, and UNITED STATES DEPARTMENT OF JUSTICE,	:	
Respondents.	:	

PETITION FOR A WRIT OF MANDAMUS

I

Jurisdiction and Venue

1. This is an action for mandamus over which this Court has jurisdiction pursuant to 28 U.S.C. § 1361. Venue is properly laid in this judicial district pursuant to 28 U.S.C. § 1391(e).

II

Parties

2. Petitioner INSLAW, Inc. ("INSLAW") is a Delaware corporation with its principal place of business in the District

of Columbia. Its business is designing, manufacturing, marketing and maintaining computer software.

3. Respondent Dick Thornburgh is the Attorney General of the United States.

4. Respondent United States Department of Justice ("DOJ" or "the Department") is an agency of the United States government.

III

Facts

5. INSLAW was founded in January, 1973 by William A. Hamilton as a nonprofit corporation to conduct research and development in the field of criminal justice. With the help of grants from the Law Enforcement Assistance Administration ("LEAA"), a division of the Department, INSLAW developed case-management software called the Prosecutor's Management Information System ("PROMIS"). Congress decided in 1980 to terminate the LEAA. PROMIS was then being used in District Attorneys' offices in large metropolitan areas throughout the United States and on a pilot basis in two large U.S. Attorneys' offices. So as to make possible the continuation both of service to PROMIS users and the funding of improvements in the software, Hamilton founded in January, 1981 a for-profit corporation with the same acronym. The new corporation acquired from the nonprofit corporation substantially all of its assets, except for PROMIS itself, which was in the public domain. Between January, 1981 and March, 1982

the new INSLAW developed a substantially enhanced version of PROMIS, which has since been further improved. This version of PROMIS is proprietary. At no time during the period addressed by this petition has any other software performed the function of case management as well as it is performed by PROMIS.

6. In March, 1982 INSLAW entered into a three-year, $10 million contract with DOJ to introduce the public-domain version of PROMIS into the United States Attorneys' Offices. Claiming that INSLAW had no title to the enhanced version of PROMIS, DOJ officials threatened to withhold payments under the contract unless INSLAW turned it over to DOJ. On the advice of its own procurement counsel, DOJ modified its contract with INSLAW in April, 1983 and agreed to pay license fees to INSLAW if and when DOJ decided to use the enhanced version of PROMIS in the U.S. Attorneys' Offices.

7. In May, 1983 DOJ officials initiated a series of contract disputes with INSLAW. These were sham disputes concocted as pretexts for withholding month by month increasingly larger amounts of money due under the contract. By February, 1985, DOJ had withheld nearly $2 million owed to INSLAW, thus forcing INSLAW to seek Chapter 11 protection in the Bankruptcy Court for the District of Columbia.

8. In June, 1986 INSLAW brought suit in the Bankruptcy Court charging DOJ with violations of the automatic stay entered on February 7, 1985, including, inter alia, the assertion of control over INSLAW's proprietary version of PROMIS

and the failure to take positive steps to curb the persistent efforts of certain DOJ officials to inflict harm on INSLAW. This suit was tried in the summer of 1987. On January 25, 1988 the Bankruptcy Court rendered judgments in favor of INSLAW in the amount of $6.8 million plus counsel fees. The Court's principal findings are attached hereto as Exhibit A. The most important of these was that DOJ officials "took, converted, stole" 44 copies of INSLAW's proprietary PROMIS case management software "through trickery, fraud and deceit." The Court also found that the main instigator of this wrongdoing was the PROMIS Project Director, C. Madison ("Brick") Brewer, a former INSLAW employee fired by Hamilton several years earlier; that DOJ officials, acting on a decision "consciously made at the highest level," ignored plain indications of vindictiveness toward INSLAW on the part of Brewer and his subordinates; and that a reason for this disregard was that D. Lowell Jensen, who rose from Assistant Attorney General to Deputy Attorney General between 1981 and 1986, was biased against INSLAW.

9. Among the Bankruptcy Court's additional findings were that DOJ officials, having driven INSLAW into Chapter 11, then "unlawfully, intentionally and willfully sought to cause the conversion of INSLAW's Chapter 11 reorganization to a Chapter 7 liquidation case without justification and by improper means" and that this attempted conversion was masterminded by Thomas Stanton, Director of DOJ's Executive Office for United States Trustees.

10. On November 22, 1989, this Court affirmed the Bankruptcy Court's judgments and, in an accompanying memorandum, stated that "after careful review of all of the volumes of transcripts of the hearings before the bankruptcy court, the more than 1,200 pages of briefs and supporting appendices and all other relevant documents in the record, there is convincing, perhaps compelling support for the findings set forth by the bankruptcy court." This Court also found it "strikingly apparent . . . that INSLAW performed its contract in a hostile environment that extended from the higher echelons of the Justice Department to the officials who had the day-to-day responsibility for supervising its work." Even the undisputed facts, the Court added, drew it to "the same conclusion reached by the bankruptcy court; the government acted willfully and fraudulently to obtain property that it was not entitled to under the contract."

11. The combination of high-level hostility and lower-level vindictiveness does not sufficiently account for the persistence and tenacity of the attempts to wrest control of PROMIS from INSLAW. These began with DOJ's refusal to recognize INSLAW's ownership of enhanced PROMIS. Then came an offer from Hadron, Inc., a software company controlled by a long-time friend of Edwin Meese, to buy INSLAW. When Hamilton refused the offer, the chairman of Hadron said, "We have ways of making you sell." Soon thereafter a New York-based venture capital firm, following a meeting with a businessman who claimed to have access to the highest levels of the Reagan administration, tried to induce the

Hamiltons to turn over to the firm their voting rights in INSLAW's common stock. When the contract disputes forced INSLAW to seek the protection of Chapter 11, Stanton attempted to push INSLAW into liquidation. After this failed, DOJ officials encouraged a Pennsylvania-based computer services company to launch a hostile takeover bid for INSLAW.

12. On information and belief, these attempts to acquire control of PROMIS were linked by a conspiracy among friends of Attorney General Meese to take advantage of their relationship with him for the purpose of obtaining a lucrative contract for the automation of the Department's litigating divisions. Among the facts pointing to the existence of this conspiracy are the following:

(a) Between 1958 and 1966, Edwin Meese and D. Lowell Jensen served together in the Alameda County, California, District Attorney's office. From 1966 to 1974 Meese was a key aide to Governor Ronald Reagan. From 1970 to 1975 Dr. Earl Brian served in Governor Reagan's Cabinet. In January, 1981 Meese became Counsellor to President Reagan. In 1981 and 1982 Brian served in the White House as the chairman of a task force which reported to Meese.

(b) When Meese joined the Reagan administration, Brian was the controlling shareholder in Biotech Capital Corporation. Biotech controlled Hadron, Inc., a company which specialized in integrating computer-based information

management systems. This was the company which tried to buy INSLAW.

(c) Mrs. Meese bought stock in Biotech's first public offering with money borrowed from Edwin Thomas, soon to be an aide to her husband. Brian lent Thomas $100,000 for the purchase of a house in Washington. Mrs. Meese later bought stock in American Cytogenetics, another Brian company.

(d) In June, 1983 a DOJ "whistleblower" warned the staff of Senator Max Baucus that, as soon as Meese became Attorney General, unidentified friends of Meese would be awarded a "massive sweetheart contract" to install PROMIS in every litigation office of DOJ. According to a statement made to Judge Jane Solomon of the Civil Court of the City of New York, Stanton's attempt to force INSLAW into liquidation was part of a "conspiracy to get the INSLAW software." Several high-level DOJ officials spoke of DOJ's determination to "get" or "bury" INSLAW. One DOJ employee said that Jensen was behind this effort. A second attributed the award to Hadron of a $40 million computer services contract for litigation support in the Lands Division to the influence of a Deputy Assistant Attorney General with close ties to Meese. Other DOJ employees connected Meese, Brian, and Hadron with the harassment of INSLAW and the attempt to acquire PROMIS.

13. When Meese became Attorney General in February 1985, he and Jensen took steps to meet DOJ's long-recognized need

for comprehensive case-management systems. A request for proposals was announced on May 25, 1986. The initial cost estimates for this procurement, code-named "Project Eagle," exceeded $200 million; options to expand the contract could increase the cost to three or four times this amount. The request for proposals contained no provision for the acquisition or development of case-management software. The Project Eagle computers would be largely wasted without this software. Undisclosed provisions of the Project Eagle procurement did in fact mandate technical specifications for the use of PROMIS. DOJ's failure to publish a specific requirement for case-management software implied an understanding that the winner of the Project Eagle contract would be an entity which already controlled such software, i.e., PROMIS.

14. In late April, 1988, Ronald LeGrand, Chief Investigator of the Senate Judiciary Committee, telephoned Hamilton. LeGrand said that he was calling at the request of an unnamed senior official in DOJ whom he had known for 15 years and regarded as completely trustworthy. According to this official, the INSLAW case was "a lot dirtier for the Department of Justice than Watergate had been, both in its breadth and its depth." The official asked LeGrand to inform the Hamiltons that the Justice Department had been compromised on the INSLAW case at every level, and that Jensen had engineered INSLAW's problems right from the start. The official also said that senior career officials in the Criminal Division knew all about this

malfeasance but would not disclose what they knew except in response to a subpoena and under oath. LeGrand has since told Hamilton and others that his informant would come forward only if assured of protection against reprisal.

15. The factual basis for the foregoing allegations is detailed in the affidavit of William A. Hamilton appended hereto as Exhibit B. Respondents are aware of most of these facts. Some are set forth in the Bankruptcy Court's findings of fact; some are contained in a written statement furnished to the Public Integrity Section of DOJ's Criminal Division (the "Section") in February, 1988 by William Hamilton and his wife; many are recapitulated and supplemented in a letter of May 11, 1989 to Attorney General Thornburgh from Elliot Richardson, one of INSLAW's counsel, which is appended hereto as Exhibit C.

16. On May 4, 1988 the Section informed INSLAW that it would investigate some of the allegations made by the Hamiltons and their counsel. On July 18, 1989, the Section notified INSLAW that its investigation of INSLAW's allegations "has been completed and that prosecution has been declined, due to lack of evidence of criminality." The Section had not in fact conducted a comprehensive, thorough, or credible investigation. INSLAW has stayed in touch with all of the individuals who have furnished information on which the allegations made in this petition are based and since December 10, 1989 has communicated with all but four of them. Each has again been asked whether or not any anyone representing DOJ has communicated or attempted to communicate

with her or him. The only one who responded affirmatively is Judge Jane Solomon. On December 11, 1989, LeGrand told INSLAW that DOJ had not to date made any attempt to obtain from him the identity of his informant. Although William Hamilton's detailed recollections of past events and conversations have frequently been corroborated by later-discovered documents or subsequent testimony, DOJ has never sought to interview him. On information and belief, DOJ has not attempted to obtain relevant documents, correspondence, notes, appointment calendars, or telephone logs from any of the individuals or entities identified in Exhibit B and has ignored the leads called to its attention in Exhibit C.

17. Respondents have a clear duty under the Constitution and laws of the United States to take care that the laws are faithfully executed. This duty embraces responsibilities both to enforce the criminal laws and to conduct civil litigation fairly. Respondents' duty to enforce the criminal laws obliges them, whenever they initiate an investigation of wrongdoing, to pursue the evidence as far as may be necessary to make a proper determination as to the course of action thereby indicated. Respondents' duty of fairness toward citizens with whom they are engaged in litigation requires them to develop a full and fair record and to refrain from instituting or continuing litigation that is demonstrably unfair. By failing and refusing to conduct a sufficient investigation in this matter, respondents have breached and neglected these duties in a manner

that cannot reasonably be defended as falling within the legitimate scope of their discretion.

18. The Department's failure and refusal to conduct an adequate criminal investigation or to examine conscientiously the merits of INSLAW's contract claims has forced INSLAW to retain lawyers and private investigators and to expend countless hours of its staff's time in an effort to discover information that would have been obtained by respondents if they had properly performed their duties. Respondents' insistence, in spite of court orders to the contrary, that INSLAW is in the wrong has delayed the vindication of INSLAW's performance under the contract. This delay has wrongfully damaged INSLAW's reputation and has resulted in an irreparable loss of both public and private sector contracts and opportunities to obtain other business, to make additional improvements in its software, to maintain the software currently being utilized by 42 U.S. Attorneys' Offices, and to provide software to other units of the Department. INSLAW's burden has been increased by respondents' obstructive tactic in obtaining a court order denying INSLAW access to subpoena power and discovery proceedings while the government's appeal from the Bankruptcy Court judgment was pending. Even after this order has been lifted, respondents' failure to carry out their duties will continue to cause further injury to INSLAW in all the above-mentioned ways. Moreover, while neglecting to investigate their own wrongdoing, respondents sought and obtained court authority for the government to audit

for the eighth time INSLAW's performance under the PROMIS contract. This redundant audit has diverted the time and energy of INSLAW's management from the effort to rebuild the company and has forced INSLAW to incur significant additional legal and accounting expenses.

19. INSLAW has exhausted all the available administrative means of inducing respondents to conduct a fair and thorough investigation. Petitioner requested the appointment of an independent counsel pursuant to the Ethics in Government Act; this request was denied on May 4, 1988. INSLAW's attempt to stimulate the Public Integrity Section to take appropriate action ended with the Section's letter of July 18, 1989 declining prosecution. INSLAW's counsel wrote the Department on August 10, 1989 calling attention to the inadequacies of the Section's purported investigation, but DOJ refused to reopen the matter. INSLAW then sought review by the Special Division of the Circuit Court of Appeals for this District of respondents' failure to appoint Independent Counsel, but the Division concluded that it lacked jurisdiction over this request. DOJ has never replied to Exhibit C. Respondents possess investigative resources and powers vastly more extensive than those available to INSLAW but have resisted every effort to persuade them to make adequate use of those resources. Only respondent Thornburgh can assure DOJ employees otherwise willing to tell the truth that their doing so will not cost them their jobs. Until and unless respondents are ordered to carry out a proper investigation, INSLAW will continue

to be the victim of their persisting unfairness. Petitioner has no adequate remedy other than the relief hereby sought.

IV

Claim for Relief

20. Petitioner realleges and incorporates herein by reference the allegations in paragraphs 1 through 19 as if fully set forth herein.

21. DOJ has failed and refused to pursue the specific factual findings of the Bankruptcy Court, since affirmed by this Court, that DOJ officials "took, converted, stole" INSLAW's computer software product through "trickery, fraud and deceit."

22. DOJ has failed and refused to investigate the additional allegations of serious malfeasance on the part of DOJ officials and others made by INSLAW and supported by INSLAW's detailed and credible submissions to the Department.

23. DOJ's decision to forego and refuse a serious investigation into the Bankruptcy Court's findings and INSLAW's additional charges reflects the direct and irreconcilable conflict of interest which plagues DOJ's exercise of its investigative and prosecutorial functions in this matter.

24. The evidence assembled by INSLAW cries out for a comprehensive, thorough, and hardhitting investigation going beyond what INSLAW has been able to do with its own limited resources and drawing upon the full array of DOJ's legal powers and professional skills. INSLAW's allegations are more than

sufficient to call upon DOJ to fulfill its responsibilities toward the firm and impartial enforcement of the criminal law and the fair assessment of INSLAW's claims.

25. DOJ has not carried out the aforesaid responsibilities. It has not conducted the kind of investigation that would be necessary in order to determine whether or not DOJ officials were part of a conspiracy to destroy INSLAW. DOJ's refusal to do so is arbitrary and capricious and contrary to the public good. It has thus abused its discretion in a fashion causing serious harm to petitioner and thereby entitling petitioner to the extraordinary relief herein requested.

WHEREFORE, your petitioner prays that this Court issue an order in the nature of mandamus:

(i) compelling respondents to conduct a fair and thorough investigation of the matters alleged by INSLAW;

(ii) requiring respondents to place direction of the investigation in the hands of an attorney who has had no previous involvement in the case;

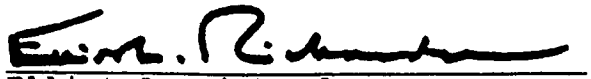
(iii) prohibiting any individual who participated in any previous purported investigation of these matters from participating in the Court-ordered investigation; and

(iv) directing respondents to submit to the Court from time to time reports of their progress in the Court-ordered investigation and, upon its completion, a final report.

Dated: Washington, D.C.
December 20, 1989

Respectfully submitted,

MILBANK, TWEED, HADLEY & McCLOY

By: 

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

INSLAW, INC., Petitioner v. DICK THORNBURGH, in his official capacity as Attorney General of the United States, and UNITED STATES DEPARTMENT OF JUSTICE, Respondents	No. 89-____

AFFIDAVIT OF WILLIAM A. HAMILTON

WILLIAM A. HAMILTON, being duly sworn, deposes and says:

1. I am President and Chairman of the Board of Directors of INSLAW, Inc. ("INSLAW"). I have held these positions since the inception of INSLAW's business operations in January of 1981. In my capacity as President and Chairman of the Board, I am responsible for overseeing, coordinating and directing INSLAW's bankruptcy proceedings, litigation strategy, and investigative efforts regarding INSLAW's dispute with the United States Department of Justice ("DOJ"). As the individual responsible for the above described efforts, I have knowledge of the detailed facts set forth below.

A. The Bankruptcy Court's Findings of Fact

2. The U.S. Bankruptcy Court for the District of Columbia heard evidence in two trials during the summer of 1987 concerning INSLAW's allegations that DOJ officials engaged in unlawful interference with INSLAW's efforts to reorganize under Chapter 11 of the U.S. Bankruptcy Code and unlawfully exercised control over INSLAW's proprietary software. The two trials together consumed more than three weeks of hearings. On January 25, 1988, the Court rendered its judgment in favor of INSLAW and announced Findings of Fact and Conclusions of Law. Among the Court's principal findings were that:

a. DOJ officials "took, converted, stole" 44 copies of INSLAW's proprietary PROMIS case management software "through trickery, fraud and deceit." In March 1982, INSLAW had entered into a three-year, $10 million contract with DOJ to introduce the earlier public domain version of the PROMIS software into the U.S. Attorneys' offices. Claiming that INSLAW had no title to a subsequent version of PROMIS that INSLAW had significantly improved through the incorporation of privately-financed enhancements, DOJ officials attempted to coerce INSLAW into turning the proprietary version of PROMIS over to DOJ, without any recognition of INSLAW's property rights, by threatening to suspend timely payments of INSLAW's invoices under the contract which then accounted for a large portion of INSLAW's corporate revenues. When this attempt at coercion failed, DOJ officials modified INSLAW's contract to provide for delivery of the proprietary version of PROMIS based on a fraudulent DOJ promise to

negotiate the payment to INSLAW of license fees if DOJ decided to use the proprietary version in the U.S. Attorneys' offices. DOJ's internal procurement counsel, William Snider, had insisted that DOJ modify the contract before taking delivery of the proprietary version of INSLAW's software.

b. Having driven INSLAW into Chapter 11, DOJ officials then immediately "sought unlawfully and without justification" to force INSLAW from there into Chapter 7, i.e., liquidation. In a sworn deposition taken in March 1987, Cornelius Blackshear, then a U.S. Bankruptcy Court Judge in the Southern District of New York, testified that in 1985, when he was U.S. Trustee in that district, Thomas Stanton, Director of DOJ's Executive Office for U.S. Trustees, used political pressure in an attempt to get Harry Jones, Blackshear's First Assistant, detailed to Washington to help force the liquidation of INSLAW. Although Blackshear recanted this testimony the following day in a sworn affidavit, the Court found that the original testimony was true.[1]

c. The PROMIS Project Manager was C. Madison Brewer, a former INSLAW employee. INSLAW's President, William Hamilton, had terminated Brewer's employment for cause several years

[1]Information corroborating the Court's finding is contained in subparagraph 3(j) below.

prior to his recruitment by DOJ; because of that, Brewer was motivated by an intense desire for revenge against INSLAW. Brewer's vindictiveness rubbed off on other DOJ officials, including particularly Peter Videnieks, the PROMIS Contracting Officer, and influenced their unlawful actions against INSLAW.

d. DOJ officials acted on a decision "consciously made at the highest level," to ignore the evidence of vindictiveness toward INSLAW on the part of DOJ officials, especially Brewer and Videnieks. Their harassment of INSLAW was permitted to continue unchecked because D. Lowell Jensen, who between 1981 and 1986 served successively as Assistant Attorney General in charge of the Criminal Division, Associate Attorney General, and Deputy Attorney General, was biased against INSLAW. As District Attorney of Alameda County in California in the 1970s, Jensen developed case management software which competed unsuccessfully against PROMIS in California. By the time Jensen came to DOJ in early 1981, he believed that DOJ had been wrong to promote the use of PROMIS by district attorneys' offices instead of his own case management software.

B. INSLAW's February 1988 Submission to the Public Integrity Section

3. After the Bankruptcy Court trials ended, my wife, Nancy Hamilton, and I looked back over everything that had happened since

DOJ awarded INSLAW the PROMIS contract. We concluded that the vengefulness of Brewer and the hostility of Jensen could explain the desire to harm and even to destroy INSLAW, but that it did not explain a series of attempts to acquire control over INSLAW's case management software so tenacious that they could be accounted for only on the basis of someone expecting to be in a position to make a lot of money from PROMIS. Once having perceived this, we were able to develop a coherent explanation of what had happened to INSLAW. We first sought, but did not obtain, an opportunity to present this explanation directly to the appropriate authorities in DOJ. We then submitted a written statement to the Public Integrity Section of the Criminal Division in February, 1988. The statement wove together the facts found by the Bankruptcy Court with other information, including that concerning the attempts to gain control over PROMIS. In the opinion of our counsel, the aggregate information thus combined was more than sufficiently specific and credible to warrant the appointment of an independent counsel. My wife and I sought through litigation counsel to meet with the Public Integrity Section prosecutor to convince her of this, but were denied an opportunity for such a meeting. The following is a condensation of the information which supplemented the Court's findings:

a. Edwin Meese and Jensen served together in the Alameda County District Attorney's office before Meese became Chief of Staff to Governor Ronald Reagan. By 1980, both the Senate Judiciary Committee and the Office of Management and Budget had recommended that DOJ establish "compatible, comprehensive case management systems among its litigating components." Through these sources as well as through Jensen, Meese would have become aware of this requirement. That he was also aware of PROMIS' capability was confirmed by a

luncheon speech on April 21, 1981 in Washington, D.C. to INSLAW's PROMIS users from throughout the U.S. in which Meese stated that he became familiar with INSLAW's work with PROMIS during the preceding several years while he was at the University of San Diego.

b. Dr. Earl Brian served as Secretary of Health with Meese in the Cabinet of Governor Reagan. By January 1981, when Meese became Counsellor to President Reagan, Brian was the controlling shareholder in Biotech Capital Corporation. The same month, Mrs. Meese bought stock in Biotech's first public offering. The money to pay for the stock was loaned to her by Edwin Thomas, another old California friend. At about that same time, Brian lent Thomas, who had just come to Washington as an aide to Mr. Meese, $100,000 for the purchase of a house. Mrs. Meese later bought stock in American Cytogenetics, another Brian company. During the first two years of the Reagan administration, Brian served as the Chairman of a Health Care Cost Reduction Task Force which reported to Meese.

c. Meese was nominated as U.S. Attorney General in January 1984. Soon after that, Jacob Stein became the Independent Counsel charged with investigating, inter alia, Meese's failure to disclose both Mrs. Meese's purchase of the Biotech stock and her receipt of the loan which financed it. Failing to find any connection between these transactions and Meese's official duties, Stein closed this

aspect of his investigation. Stein was unaware of the facts set forth in the following subparagraphs.

d. Brian was in a position to exploit his friendship with Meese. Brian controlled Biotech, and Biotech controlled Hadron, Inc. Hadron was in the business of integrating federal government computer-based information management systems. In May 1983, when the contract disputes began, the PROMIS system was already in use in the larger U.S. Attorneys' offices. It was then -- and is now -- the best available case management software. Brian could acquire PROMIS at little or no cost either by having DOJ procure a determination that the government, and not INSLAW, had title to the software; by having DOJ push INSLAW into liquidation, making the software available at a fire-sale price; or by arranging a friendly or hostile takeover of INSLAW. One after another, all three approaches were in fact pursued. The first two are described in the Bankruptcy Court's findings. The attempts at the third are detailed in subparagraphs f and i of this paragraph and subparagraphs d-f, and l-p of subparagraph 4. Brian's chance to use PROMIS would come whenever Meese and Jensen were able to launch the DOJ-wide Office Automation and Case Management Project for which, as noted above, the need had long been recognized.

e. In June 1983, a DOJ "whistleblower," whose identity INSLAW has not yet been able to

discover, warned the staff of Senator Max Baucus that, as soon as Meese became Attorney General, unidentified friends of Meese would be awarded a "massive sweetheart contract" to install the PROMIS software in every litigation office of DOJ.

f. On April 20, 1983, about two weeks after the contract modification referred to in paragraph 2(a) and less than a month before the first of the sham contract disputes, I received a phone call from Dominick Laiti, Chairman of Hadron, Inc. Laiti told me that Hadron needed the PROMIS software for federal government contracts that it expected to receive as a result of its political contacts at the highest level of the Reagan Administration. Laiti said that Hadron intended to become the leading vendor in the United States of software for law enforcement and courts and that this was why it had recently purchased SIMCON, Inc. (police software) and ACCUMENICS, Inc. (litigation support software) and why it was seeking to purchase INSLAW (court and prosecution software). Laiti identified Edwin Meese as Hadron's political contact at the highest level of the Reagan Administration, when I asked Laiti to whom he was referring. Laiti also told me that Mrs. Meese owned stock in his company. When I declined to meet with Laiti to discuss his proposition, Laiti said: "We have ways of making you sell."

g. In May 1983, DOJ officials initiated a series of major contract disputes with INSLAW. These

were sham disputes concocted as pretexts for withholding an increasingly larger amount of money each month of the contract. By February, 1985, DOJ had withheld nearly $2 million owed to INSLAW for services rendered under the contract, thus forcing INSLAW to seek Chapter 11 protection.

h. As soon as Meese became Attorney General, he and Jensen set in motion steps toward carrying out the DOJ-wide office automation and case management project. A request for proposals for this procurement, known as the Uniform Office Automation and Case Management Project and code-named "Project Eagle," was announced on May 25, 1986. Initial cost estimates were in the vicinity of $212 million; however, the options to expand the contract to encompass DOJ's quasi-autonomous bureaus could multiply this cost estimate by a factor of three or four. Although most of the capacity of the Project Eagle computers would be wasted without case management software, the request for proposals did not provide for the acquisition or development of any such software. DOJ acknowledged that it did not possess this software but nevertheless stated that it did not wish to have the winning bidder develop it. DOJ denied at first that certain provisions of the procurement, mandated through an Amendment to the Request for Proposals, dated May 25, 1986, implied an undisclosed plan to use PROMIS on Project Eagle computers but later admitted that the very purpose of those provisions was to make such use possible.

i. After the 1985 attempt to push INSLAW into liquidation failed, Systems and Computer Technology, Inc. (SCT), a Pennsylvania-based computer services company, launched a hostile takeover bid for INSLAW. My rejection of the SCT bid was supported by INSLAW's creditors.

j. In March 1987, Judge Blackshear told Judge Jane S. Solomon of the Civil Court of the City of New York that the pressure to force the liquidation of INSLAW referred to in paragraph 2(b) was part of a "conspiracy to get the INSLAW software." In the same period, Judge Blackshear made several statements consistent with his original testimony during the course of telephone conversations with Charles Docter, Brian O'Neill, and Michael Lightfoot, INSLAW's counsel. In the summer of 1988, Judge Blackshear told Anthony J. Pasciuto, the former Deputy Director of the Justice Department's Executive Office for U.S. Trustees, that he had recanted his sworn testimony about the DOJ conspiracy to liquidate INSLAW so that fewer people would be hurt.

C. Additional Evidence Assembled by INSLAW

4. Despite the credibility and specificity of the foregoing information, John Keeney, Acting Assistant Attorney General for the Criminal Division, informed INSLAW in a letter dated May 4, 1988 that the Division had completed its review of the Hamiltons' allegations and concluded that the appointment of an independent counsel was not warranted. The letter also stated that the Public Integrity Section would investigate certain of the allegations.

INSLAW has meanwhile conducted its own effort to corroborate them. Although this effort has been handicapped by the fact that we have been denied access to subpoena power and discovery proceedings pending the government's appeal from the Bankruptcy Court judgment, we have nevertheless been able to obtain the significant information which follows:

a. Donald Santarelli, a former Administrator of the Law Enforcement Assistance Administration and an attorney for INSLAW, met with Meese at the White House on May 4 or 5, 1981. Immediately following the meeting, Santarelli telephoned me to say that Meese had told him that Jensen, then heading the Criminal Division, had been chosen to spearhead a project to install the PROMIS software in all 94 U.S. Attorneys' offices, each of the DOJ legal divisions, and in quasi-autonomous DOJ bureaus such as the Bureau of Prisons, the Immigration and Naturalization Service, and the U.S. Marshal's Service.

b. An informant who does not wish to be named until assured of protection against reprisal told INSLAW with regard to the sham contract disputes that in 1984, Marilyn Jacobs, Jensen's secretary at DOJ, stated to the informant that "Jensen was the main person behind the INSLAW problem" and that "his style was to operate using his subordinates."

c. Frank Mallgrave, former Assistant Director of DOJ's Executive Office for U.S. Attorneys (EOUSA), told INSLAW that in May or June 1981, when Lawrence McWhorter was Deputy Director of

EOUSA, McWhorter confided to Mallgrave that INSLAW was likely to win the competition for the PROMIS procurement and that "we are going to get INSLAW." Soon thereafter DOJ ousted the two key officials in charge of DOJ's PROMIS program and replaced them with persons recruited from outside DOJ. Betty Thomas, the PROMIS DOJ Contracting Officer, was removed by threatening to charge her with "nonfeasance" unless she voluntarily stepped aside; she was replaced by Videnieks. Patricia Goodrich, the PROMIS Project Manager, was pushed aside to make room for Brewer.

d. John Schoolmeister, a former Customs Services Program Officer, told INSLAW that Videnieks, at the time he was hired as the PROMIS Contracting Officer, was the Contracting Officer for two contracts between the U.S. Customs Service and Hadron, Inc., and that Videnieks came to know the Hadron management during the course of that assignment.

e. Paul Wormeli, former Vice President of Simcon, Inc., a Hadron subsidiary, and Marilyn Titus, former secretary at both Simcon and Hadron, gave INSLAW information about the sequel to the approach by Dominick Laiti referred to in subparagraph 3(f) above. Both Wormeli and Titus said that Laiti, Wormeli, and Brian met in New York in September 1983 to raise capital for Hadron. Wormeli said that their aim was to raise $7 million for Hadron's expansion into criminal justice information systems. Titus, then secretary to Wormeli, added that the

purpose of the trip was to "raise capital to buy the court [i.e., PROMIS] software." Wormeli also stated that he and Laiti met during this September 1983 visit to New York with Mark Tessleman, then Vice President of Allen and Company, a Wall Street Investment Bank, to discuss raising the capital.

f. Jonathan Ben Cnaan, an account executive with 53rd Street Ventures, a New York City venture capital firm that then had a small equity investment in INSLAW, described a meeting in September 1983 at 53rd Street Ventures with a "businessman with ties at the highest level of the Reagan Administration" who was eager to obtain the PROMIS software for use in federal government contract work. The meeting took place several months after the contract disputes with DOJ had emerged, and the businessman assured 53rd Street Ventures that INSLAW would never be able to resolve them. According to Ben Cnaan, the businessman was annoyed that I had rebuffed an attempt earlier that year to buy INSLAW in order to obtain title to the PROMIS software.

g. In December 1984, shortly before INSLAW's Chapter 11 filing, Daniel Tessler, the Chairman of 53rd Street Ventures, came to INSLAW and tried to induce my wife and me to turn over to him the voting rights of our controlling interest in INSLAW common stock. Daniel Tessler told me that neither 53rd Street Ventures nor Hambro Venture Capital would attempt to help INSLAW raise capital and avoid

possible disintegration unless we turned over the voting rights of our stock to him by the end of the business day. Daniel Tessler is a relative of Alan Tessler, the senior partner in the New York City law firm of Shea and Gould responsible for Brian's and Hadron's mergers and acquisitions work. At a national venture capital meeting in Washington, D.C. in May 1988, Patricia Cloherty, Daniel Tessler's wife and former business partner, told Richard D'Amore, an officer of Hambro International Fund, that she "knew all about" Brian's role in the INSLAW matter.

h. In approximately June 1985, Edward Hurley, then a Hadron Vice President in charge of its criminal justice systems work, told Theresa Bousquin that he did not believe that INSLAW would be able to survive a Chapter 11 and that Hadron wanted to acquire INSLAW's "court software" to complement its law enforcement software. Hurley resigned from Hadron in August 1985, the month after the U.S. Bankruptcy Court issued a Confidentiality Order sealing INSLAW's proprietary and customer information from DOJ. The Confidentiality Order thwarted DOJ's covert efforts to liquidate INSLAW. In the fall of 1985, Hadron divested itself of the law enforcement software that Hurley had earlier that year cited as a key part of Hadron's ambitions in the criminal justice field.

i. A second informant who fears reprisal told INSLAW that James L. Byrnes, a Deputy Assistant

Attorney General in the Land and Natural Resources Division with close ties to Meese, spearheaded the award by DOJ in October 1987 to a Hadron subsidiary of a $40 million computer services contract for litigation support in that Division.

j. Jacob Stein reported that Meese's telephone logs were missing for certain periods in 1983. INSLAW later discovered that these periods coincided with the effort to force INSLAW to turn over the proprietary version of PROMIS, the eruption of the contract disputes, and the Brian and Laiti meetings in New York City.

k. Henry Darrington and Timothy Walker, both former Dickstein, Shapiro and Morin employees, told INSLAW that they participated in the shredding of about 40 boxes of Meese's documents acquired by the law firm in connection with its representation of Meese in the Stein investigation.

l. Michael Simmons, former Assistant Vice President of Systems and Computer Technology (SCT), told INSLAW that the hostile takeover bid referred to in paragraph 3(i) above was discussed in advance with DOJ officials. He said that DOJ officials met in late 1985 with representatives of SCT to encourage the takeover and that the officials strongly hinted that INSLAW's contract disputes would be settled quickly once I was ousted as President of INSLAW.

m. Very close to the time that SCT discussed its hostile takeover bid with DOJ officials, it also discussed the planned takeover with "Mr. Allen" of Allen and Company, according to former SCT employees Robert Radford and Norman Keyt. In approximately September 1985, Michael Emmi, SCT President, and Michael Simmons, flew on a private aircraft to the Berkshire Mountains for a meeting with "Mr. Allen" of the Wall Street investment bank of Allen and Company to discuss the plan for SCT's takeover of INSLAW. Herbert A. Allen, Jr., President of Allen and Company, has a home in the Williamstown, Massachusetts area of the Berkshires. Radford heard Emmi boast, at about the time of the meeting, that he had contacts through which he could manipulate INSLAW's contract disputes with DOJ. According to the Securities and Exchange Commission, Allen and Company subsequently invested about $5 million to buy about 7.8% of SCT. Richard Crooks, the Allen and Company trader who bought the SCT shares, reportedly told Sue Grimm, former SCT Director of Investor Relations, that Allen and Company bought the SCT stock on behalf of a third party whose identity Crooks was not free to disclose, and that Allen and Company had, in fact, made a written acquisition offer, on behalf of the third party, to the SCT Board of Directors, but that the offer had been declined. The Allen and Company disclosures to the Securities and Exchange Commission, do not, however, reveal that the Allen and Company purchases of the SCT stock were made on behalf of any third party.

n. According to Radford, he and other SCT employees were given scripts by SCT management to use in attempting to disparage INSLAW to its existing and prospective customers in state and local governments throughout the United States during 1986. Part of the script was to cast doubt on INSLAW's title to the PROMIS case management software, and, therefore, the need to pay INSLAW license fees.

o. In early 1986, Michael Searcy, then Senior Vice President of SCT, met with me in Washington, D.C., and offered to pay me and my wife the sum of $500,000 if we would support the sale of INSLAW by its creditors to SCT. According to Norman Keyt, SCT had authorized Searcy to pay us as much as $1,000,000, but decided, instead, to proceed with a hostile takeover when I did not demonstrate any interest in the SCT offer.

p. During the approximately year-long period of the SCT effort to acquire INSLAW, Brian's mergers and acquisition counsel, Shea and Gould, continued to bill time and expenses to the INSLAW bankruptcy case. INSLAW has a copy of a Shea and Gould invoice for services rendered in the INSLAW case between October 1, 1985 and September 25, 1986. Shea and Gould was not serving as counsel of record for any INSLAW creditor during this period. According to former SCT employees Harry Stege and Norman Keyt, and former SCT consultant Thomas Evans, there was a New York City law firm that did not represent SCT, but which worked behind the

scenes to assist SCT in the hostile takeover bid for INSLAW. According to Evans, there was a Shea and Gould file in the SCT Law Systems Division in Phoenix containing documents transmitted by FAX from SCT headquarters. According to Stege, the New York City law firm introduced Emmi to one or more members of INSLAW's Unsecured Creditors Committee so that Emmi could disparage INSLAW's ability to reorganize under its current management, and also obtain confidential INSLAW data for use in formulating the SCT takeover bid.

q. Lois Battistoni, a former DOJ Criminal Division employee, told INSLAW that an employee of the Criminal Division disclosed to her in 1988 that the company chosen to take over INSLAW's business with DOJ was connected to one of the top DOJ officials through a California relationship and that Hadron fit the bill because both Brian and Meese served together in Governor Reagan's administration in California.

r. Battistoni's informant also told her that between February and May 1989 DOJ was still considering the installation of PROMIS on the Project Eagle computers. In early May 1989, a decision not to do so was made "at the highest level" of DOJ. On June 20, 1989, however, DOJ announced plans to buy expensive new computers for each of the 42 largest U.S. Attorneys' offices so that they could continue to use PROMIS in those offices. This meant that 42 computers contracted for under Project

Eagle would be wasted. DOJ was "afraid to do otherwise" because the computers on which the U.S. Attorneys' offices had been operating PROMIS were fast becoming obsolete and there was no case management software, other than PROMIS, available for installation on the new Project Eagle computers.

s. Battistoni also learned from another employee of the Criminal Division in July 1989 that DOJ intended "to bury INSLAW," meaning cover up what it had done to INSLAW.

5. In late April 1988, Ronald LeGrand, then Chief Investigator of the Senate Judiciary Committee, telephoned me to request a full briefing on the disputes between INSLAW and DOJ. My wife and I subsequently briefed LeGrand at INSLAW on the morning of May 11. LeGrand telephoned me two days later with information that he said a trusted source had asked him to convey. LeGrand described the source as a senior career official in DOJ "with a title" whom LeGrand had known for 15 years and whose veracity LeGrand could attest to without reservation. Shortly after DOJ's public announcement on May 6, 1988 that DOJ would not seek the appointment of an independent counsel in the INSLAW matter and that it had cleared Meese of any wrongdoing, the source told LeGrand that "the INSLAW case is a lot dirtier for the Department of Justice than Watergate was, both in its breadth and in its depth." The source also said that the "Justice Department has been compromised on the INSLAW case at every level." On several occasions since then, LeGrand has confirmed what he told me, and on October 11, 1988, Elliot Richardson, counsel to INSLAW, sent Robin Ross, an assistant to Attorney General Dick Thornburgh, a memorandum summarizing the statements attributed by LeGrand to his source. In addition, the source made the following statements:

a. Jensen engineered INSLAW's problems right from the start and relied for this purpose principally upon three senior DOJ officials: Miles Matthews, Executive Officer of the Criminal Division; James Knapp, a non-career Deputy Assistant Attorney General in the Criminal Division; and James Johnston, Director of Contract Administration in the Justice Management Division. Miles Matthews stated in the presence of LeGrand's source that "Lowell [Jensen] wants to get INSLAW out of the way and give the business to friends."

b. The source told LeGrand that John Keeney and Mark Richards, each a career Deputy Assistant Attorney General in the Criminal Division, and Philip White, the recently retired Director of International Affairs for the Criminal Division, knew "all about" the Jensen malfeasance in the INSLAW matter. Although Richards and White were "pretty upset" about it, the source did not believe that either of them would disclose what they knew except in response to a subpoena and under oath. The source added that he did not think either Richards or White would commit perjury.

c. The source believes that documents relating to Project Eagle were shredded inside DOJ, but that INSLAW should nevertheless subpoena DOJ paperwork prepared by a Jensen subordinate relating to the purchase of large quantities of computer hardware for which the senior DOJ career staff could see no justification.

D. INSLAW's Allegations Were Not Seriously Investigated

6. The information summarized above is self-evidently material to INSLAW's allegations. It supports the inference that the effort to destroy INSLAW was motivated by the aim of acquiring PROMIS for Project Eagle. If the Public Integrity Section had done no more than match INSLAW's independent effort, it would have pursued the same leads that INSLAW pursued, identified the same individuals whom INSLAW interviewed, and obtained the same information. INSLAW has asked the individuals identified in the preceding paragraphs whether or not they have ever been asked about the INSLAW case by anyone representing the Department of Justice. Beginning on December 11, 1989, INSLAW attempted to recontact each of the approximately 30 witnesses mentioned in this Affidavit to see if any of them has ever been contacted about INSLAW by DOJ. As far as we could determine, only one has been approached. Two representatives of the Department of Justice interviewed Judge Jane Solomon. I am reliably informed, moreover, that the Department of Justice has not yet attempted to obtain the testimony of the informant whose statements to Ronald LeGrand are described in paragraph 5 above. Although my own detailed recollections of past events and conversations have frequently been corroborated by later-discovered documents or subsequent testimony, the Department of Justice has not interviewed me either about my wife's and my February 1988 written statement, or about what we have since learned.

7. Assuming that a full, thorough, and impartial investigation would have sought to obtain relevant documents, correspondence, notes, appointment calendars, and telephone logs from individuals and organizations involved with INSLAW, I and my representatives have taken steps to find out whether or not the Department of Justice has made any such effort. So far as we can determine, this has not been done. The DOJ has never sought documents from Allen and Company relative to the effort of Brian, Laiti and Wormeli to

raise capital for Hadron. Neither has DOJ sought documents from 53rd Street Ventures or its then parent organization, Alan Patricoff and Associates, relating to communications about INSLAW, with a businessman having ties to the highest level of the Reagan Administration. DOJ has not sought documents from Systems and Computer Technology (SCT) relating to meetings between representatives of SCT and officials of DOJ in connection with SCT's attempt to take over INSLAW. The same is true, so far as we can find out, with respect to documents bearing on the communications during the years 1981-1988 between Earl Brian or Dominick Laiti, and Meese, Videnieks, Brewer, Jensen, Thomas Stanton, Patrick R. Gallagher, John Oakes, and Raymond Vickery, Jr.; the efforts of Hadron, Brian or Laiti, to enlist the cooperation of 53rd Street Ventures, or other INSLAW shareholders in acquiring the PROMIS software; and the identity of the person on whose behalf Allen and Company made a multi-million dollar equity investment in SCT at the time when SCT was trying to take over INSLAW.

William A. Hamilton

DISTRICT OF COLUBMIA; ss:

Subscribed and sworn to before me, a Notary Public in and for the District of Columbia this 22nd day of December 1989.

Deborah L. Branzell

Notary Public

DEBORAH L. BRANZELL, Notary Public
in and for the District of Columbia
My Commission Expires August 14, 1993

My Commission expire: _____

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In re INSLAW, INC., Debtor.	)	Case No. 85-00070 (Chapter 11)
INSLAW, INC., Plaintiff, v. UNITED STATES OF AMERICA AND THE UNITED STATES DEPARTMENT OF JUSTICE, Defendants.	)	Adversary Proceeding No. 86-0069

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Counts I, II and III of the Complaint)

[The following paragraphs are numbered as they appear in the United States Bankruptcy Court's Findings of Fact]

VII. BREWER'S USE OF MODIFICATION 12 "TO GET INSLAW'S GOODS"

A. NEGOTIATION OF MODIFICATION 12

229. The DOJ persisted in its attempts to interrelate resolution of the advance payments issue and INSLAW's assertion of proprietary rights in Enhanced PROMIS. (PX 62; PX 66) When it became clear to INSLAW in March 1983 that DOJ would not resolve the advance payment issue without first obtaining the PROMIS

software, INSLAW proposed in a March 11, 1983 letter to DOJ that the parties enter into an escrow agreement pursuant to which DOJ would receive the software if, and only if, INSLAW went into bankruptcy. (PX 68; Hamilton, T. 167-168; Brewer, T. 1693-1694; Merrill, T. 791) Brewer's and Videnieks' professed concern about INSLAW's financial viability was merely a smoke screen; such concerns would have been fully met by placing the PROMIS software in escrow with a third party. The only reason such an arrangement was not acceptable to DOJ was because it wanted to "get" INSLAW's "goods." This is further evident from the exchange of correspondence from Mr. Rugh whereby the Department having gotten the goods, pretended to find fault with INSLAW's methodology for proving private funding while refusing to divulge to INSLAW either any realistic purported defects in that methodology or any alternative methodology which would be acceptable to DOJ. DOJ thus took the tack designed to be the most harmful to INSLAW without any conceivable concomitant benefit to the Government other than the desire to get away with taking something without right.

* * *

231. A March 28 memo further recounts that Videnieks was in full agreement with Brewer about the letter, indicating quite significantly '... why do you need signature if you got the goods?' (PX 73; Videnieks, T. 1837-1838)

* * *

271. After Rooney left the PROMIS Oversight Committee meeting, and based upon the urging of Brewer and his staff and notwithstanding Rooney's favorable conclusions about a constructive resolution to the word processing problem, and the fact that that was an initiative arranged by Deputy Attorney General Schultz, Jensen approved a decision to begin termination of the contract for default. (Richardson, T. 644, 698; PX 339 (Stephens] at pp. 25-26; PX 341 (Tyson] at pp. 175-178)

* * *

312. The Executive Office reported directly to Jensen when he was Associate Attorney General and then began reporting directly to the Deputy Attorney General when Jensen was promoted to that position. (Brewer, T. 1661-1662; Tyson, T. 1534-1535).

313. About the time that Jensen was promoted to Associate Attorney General, ranking DOJ official on the PROMIS Oversight Committee and immediate organizational superior of the Executive Office, Videnieks first suspended the payment of costs to INSLAW under the PROMIS Contract. (PX 98) The July 18, 1983, letter to INSLAW from Contracting Officer Videnieks, that sought to justify the suspension of almost a quarter of a million dollars in payments due INSLAW under the Contract, showed Associate Attorney General Designate Jensen as the number one "cc". (PX 98) Videnieks testified that he never met Jensen and cannot account for why he copied the payment suspension letter to Jensen but

failed to copy the DOJ Director of Procurement, his immediate superior. (Videnieks, T. 1869-1871)

* * *

316. In December 1983, INSLAW counsel Richardson met with Assistant Attorney General Rooney in an attempt to resolve both the payment-suspension problem and a word processing hardware problem. There was every indication that the meeting would lead to constructive resolution of the problems. (Richardson, T. 641-644).

* * *

320. In February 1984, Brewer telephoned Hamilton to tell him that Jensen had just decided to terminate the word processing part of the INSLAW contract for convenience. (Hamilton, T. 207)

* * *

323. Elliot Richardson and Don Santarelli visited Acting Deputy Attorney General Jensen on March 13, 1985, to ask for an immediate investigation into INSLAW's complaints about Brewer; a process for fair and expeditious resolution of the contract disputes that had propelled INSLAW into bankruptcy; and DOJ consideration of the larger public interest involved in preserving INSLAW as a unique asset for both U.S. Attorneys and

the state and local prosecutors and courts. (Richardson, T. 658-660; PX 328 [Jensen] at pp. 22-24).

324. Jensen appointed his aide, Jay Stephens, to follow through on the matters raised by Richardson and Santarelli. (PX 328 (Jensen] at pp. 24-25, 37-38; PX 339 (Stephens] at p. 40; Richardson, T. 661)

325. Although Jensen testified that he believed an investigation of Brewer's conduct against INSLAW had been conducted, in fact neither Stephens nor the designated agency ethics officer ever conducted such an investigation. (PX 328)[Jensen] at PP. 25-26; PX 339 [Stephens] at pp. 47-48; PX 343 (Wallace] at pp. 44-46, 210-211; Sposato, T. 2267-2270).

* * *

339. On May 2, 1983, Hamilton met with William Tyson to complain about the biased administration of the PROMIS Contract on the part of Brewer and Videnieks, and to state that Brewer's conduct may be the result of a lack of impartiality against Hamilton for having previously fired Brewer. (Hamilton, T. 199; PX 341 (Tyson] at pp. 136-138, 140-1421, Tyson, T. 1531-1532, 1550-1551) Hamilton specifically identified ten to twelve incidents which appeared to have been the result of Brewer's bias, including Brewer's conduct at the April 19, 1982 meeting in connection with the BJS contract and the spreading of false information concerning INSLAW's financial condition among personnel in various U.S. Attorney's offices. (Hamilton, T.

199-201) Tyson responded that he took seriously these sort of allegations and that he would conduct an inquiry. (Hamilton, T. 202; Tyson, T. 1554-1555) Again, no referral to OPR occurred, nor did Tyson do anything other than to ask McWhorter whether Brewer had been fired by the Institute. (PX 341 [Tyson) at pp. 140-142; Tyson, T. 1552, 1556; Hamilton, T. 208) INSLAW never even got a report back from Tyson on this matter. The government began to suspend payments on its contract cost expenses later on in May 1983. (Hamilton, T. 208; Tyson, T. 1554-1555).

* * *

351. This Court has found, (i) in an extended bench ruling on June 12, 1987 (which is incorportated herein by reference), as a result of four days of hearing in In re INSLAW, Inc., Case No. 85-00070, at which DOJ appeared and offered evicence, (ii) in an Order dated July 20, 1987, and (iii) in Findings of Fact and Conclusions of Law issued on this date in that case, and this Court incorporates into these findings in this adversary proceeding the following:

*

(b) Sometime between February 7 and February 20, 1985, Brewer discussed the INSLAW Chapter 11 bankruptcy case with Thomas J. Stanton, Director of the Executive Office of United States Trustee ("EOUST"). At the time of Brewer's discussion

with Stanton, EOUST and DOJ believed that they had an interest in seeing that INSLAW was liquidated in order to weaken or eliminate INSLAW's ability to press its contract disputes with DOJ. As result of the disucssion, Stanton made a commitment to Brewer that he would undertake to cause the conversion of INSLAW's Chapter 11 case to a Chapter 7 liquidation case.

*

(d) Acting on his commitment to Brewer, Stanton contacted William C. White, the local United States Trustee whose office had jurisdiction over the INSLAW bankruptcy, and pressured him to convert the case to a Chapter 7 liquidation. When White resisted, Stanton sought to have the office of Cornelius Blackshear, then the United States Trustee for the Southern District of New York, detail Blackshear's assistant trustee, Harry Jones, to EOUST, Washington, D.C., where Jones would be assigned to accomplish the conversion. Blackshear refused to permit this.

*

(g) The fact of Stanton's commitment to Brewer to seek INSLAW's liquidation was relayed by Brewer to Rugh on or before February 20, 1985. Brewer told Rugh that Stanton had said the INSLAW bankruptcy would be converted to a Chapter 7 liquidation within 30 to 60 days. On February 20, 1985, acting on

this information, Rugh telephoned Peter Videnieks, the Contract Officer on the PROMIS contract, and told him that Brewer had talked to Stanton and that there was 'no way' the INSLAW bankruptcy would continue as a Chapter 11 case and that INSLAW probably would be liquidated within 30 to 60 days. Rugh told Videnieks that in view of the impending liquidation, DOJ would need to obtain a new site for the Government computer then on INSLAW's premises in Lanham, Maryland.

(h) On or about February 21, 1985, Rugh telephoned Gregory McKain, a senior INSLAW software programmer who had worked on the PROMIS contract since its inception, and told them that EOUSA had found out from the 'trustees' that INSLAW could not make it in Chapter 11 and that the company would probably go into Chapter 7 in 30 to 60 days. Rugh then discussed with McKain the possibility of working for DOJ on the remainder of the PROMIS project under a six-month sole source contract, assuming INSLAW did go out of business.

* * *

352. Rugh of DOJ's Executive Office attempted to recruit an INSLAW software engineer during the month INSLAW filed for protection, telling the INSLAW employee, Gregory McKain, that the 'trustees' had told the Executive Office that INSLAW would probably be liquidated within 30-60 days.

* * *

362. DOJ converted INSLAW's Enhanced PROMIS by trickery, fraud and deceit, and DOJ has used and continues to use Enhanced PROMIS not only in the 20 U.S. Attorney's offices entitled to use a different non-proprietary version of PROMIS, but also in approximately 25 other U.S. Attorney's offices.

* * *

398. During the trial of this matter, the Court observed the witnesses very closely and reached certain definite and firm convictions based on the demeanor and expressions of those witnesses, as well as on an analysis of the inherent probability or improbability of their testimony in light of the documentary evidence and other known facts. Accordingly, the Court makes the following general findings with respect to such trial witnesses, although the comments expressed herein should not be interpreted as being fully inclusive:

(a) The testimony of William Hamilton was accurate in all or almost all respects, even taking into account the natural human tendency to emphasize those things favorable to one's own cause. Mr. Hamilton was an impressive witness with an exceptionally good memory and an extraordinary ability to remember with precision details of events that occurred years ago.

(b) The testimony of John Gizzarelli was accurate in all major respects. Although his recollection was not as good as

Hamilton's recollection, it is impossible for the Court to conclude that Gizzarelli was inaccurate in his detailed, and substantiated testimony describing Brewer's intense hatred of Hamilton. Gizzarelli is no longer an employee of INSLAW, and there was no reason for him to slant his testimony to one side or the other.

(c) The testimony of Elliot Richardson was very impressive. The Court found Richardson to be of high integrity and his testimony to be absolutely reliable.

(d) The testimony of James Rogers, Dean Merrill, Harvey Sherzer, Bellie Ling and Marian Holton was straightforward and consistent with the known facts.

(e) The Court was impressed with the credentials and expertise of Thomas DeLutis, INSLAW's expert witness. The Court believes DeLutis to have conducted himself with a tenable aura of impartiality and finds the DeLutis testimony to be very believable.

(f) The testimony of Laurence McWhorter was totally unbelievable for a number of reasons. First, McWhorter could not remember anything other than a 30-second telephone call that he had with Hamilton before the contract was entered into. On cross-examination, it was brought out that McWhorter had testified at his deposition that he repeatedly could not recall virtually anything related to the contractual relationship between the parties, notwithstanding that he supposedly had supervisory responsibility over this relationship and over Brewer. Second, McWhorter's testimony was contradicted by

Hamilton and also by his supervisor, William Tyson. Third, Brewer was a member of McWhorter's wedding party and had advanced money to McWhorter in the form of buying into a real estate partnership with McWhorter.

(g) The testimony of James Kelley was not believable. His hatred of Hamilton oozed from every pore; it was tangible and palpable. The Court finds that Kelley was a very bitter man who was eager to find any loophole that might exist to evade his ethical responsibilities as a lawyer not to reveal the confidences of a former client. Kelley showed that he was eager to say anything to harm Hamilton as long as it would sound plausible. In addition, Kelley is heavily involved with a company at least partially in competition with INSLAW and he is a friend or acquaintance of Brewer.

(h) The testimony of Jack Rugh also was not believable. Rugh was a biased witness whose testimony was tainted by the negative effect Mr. Brewer and his lack of impartiality had upon Mr. Rugh. Mr. Rugh also was biased in view of his ambitions to carry on the PROMIS Project in-house. Moreover, his testimony is at odds with the written PROMIS contract in several important particulars. For example, § 3.2.4.3. of the contract provides that INSLAW was required to provide 'error-free' software which Rugh mistakenly believed required INSLAW to fix any 'bugs' in the software regardless of who reported such bugs. This is contrary to the contract and is totally inconsistent with the logic of competitive bidding. As Hamilton pointed out in his testimony, INSLAW would be at a significant disadvantage to another company

attempting to get the PROMIS contract because the other company would have no other customers making bug fix demands whereas INSLAW would have to be including in DOJ's software all bug fix demands made by its customers or third parties other than DOJ. In addition, Rugh "interpreted' the contract to continue in effect as to all 94 offices even after the 74 office word processing phase of the contract was cancelled. This construction is implausible, as was Rugh's denial of Brewer's bias which was evidenced again and again during the course of the contract. Finally, Rugh suffered from the collective amnesia that many of DOJ's witnesses were suffering from and this is further evidence of his unreliability.

(i) The testimony of William Tyson was not believable. His testimony that Brewer's attitude toward INSLAW was positive, constructive and favorable is so ludicrous in light of the evidence taken as a whole that it was difficult for this Court to believe any of Mr. Tyson's testimony. Tyson displayed an extraordinarily blase attitude toward serious allegations of personal bias by Brewer towards Hamilton and INSLAW, and did little, if anything, to discharge his responsibilities as Brewer's superior to investigate these allegations.

(j) The testimony of C. Madison Brewer was most unreliable, and entirely colored by his intense bias and prejudice against Hamilton and INSLAW.

(k) The testimony of Robert Whiteley and Vito DiPietro was generally truthful, although they tended to slant certain of their testimony in favor of their employer.

(l) The testimony of Peter Videnieks was substantially unreliable. Videnieks was under Brewer's domination and was thoroughly affected by Brewer's bias. In addition, Videnieks displayed an amazing lack of recollection of pertinent facts, especially in regard to the very detailed notes which he maintained in respect to this matter. It is obvious that Videnieks acted at the bidding of Brewer and that his attitude toward INSLAW was directly the consequence of Brewer's influence on him.

(m) The testimony of James Mennino was absolutely incredible. It was totally unsubstantiated and obviously biased. The Court infers from the evidence as a whole that Mennino sought to obtain a copy of PROMIS software from DOJ by offering to provide DOJ with false information that Mennino believed would injure INSLAW. Mennino failed to substantiate his charges against INSLAW at the time these charges were originally made, even though DOJ requested substantiation at that time. Moreover, Mennino failed to bring any substantiating information to trial, notwithstanding his testimony that such information was available.

(n) The testimony of Ugo Gagliardi, DOJ's expert witness, is entitled to little weight and should be thoroughly discounted for several reasons. First, Gagliardi was heavily influenced in his view of the case by a viciously inaccurate characterization of INSLAW's position in this case provided by Rugh. Second, Gagliardi assumed the role of an advocate for the government and there was not even a pretense of impartiality in his testimony.

Finally, Gagliardi reached speculative conclusions on the basis of inadequate factual premises.

(o) The testimony of Alan Gibson was basically believable, except as otherwise noted in these Findings, although he is not an expert qualified to give an opinion concerning the adequacy of INSLAW's methodology for determining the source of funding for individual enhancements to the premised software.

(p) The testimony of Janis Sposato is to be viewed with considerable skepticism. Given Sposato's position as a DOJ ethics officer, her casual treatment of repeated serious allegations of outrageous misconduct by Brewer can only be described, even charitably, as willful blindness to the obvious.

(q) The testimony of Geraldine Schacht and Joyce DeRoy was substantially believable, and the Court has no indication that they were biased or would have any reason to favor either party.

* * *

399. The acts of DOJ as described in the foregoing findings of fact were done in bad faith, vexatiously, in wanton disregard of the law and the facts, and for oppressive reasons -- to drive INSLAW out of business and to convert, by trickery, fraud and deceit, INSLAW's PROMIS software.

George Francis Bason, Jr.
United States Bankruptcy Judge.

0410b

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COPY

May 11, 1989

The Honorable Dick Thornburgh
Attorney General
Department of Justice
Washington, D.C. 20530

Dear Mr. Attorney General:

As you undoubtedly know through Robin Ross, I have for some time been seeking the opportunity to talk to you about an aspect of the INSLAW matter that seems to me to belong squarely in your lap. This is the conflict of interest involving the Department of Justice itself that I first called to your attention in my letter of August 19, 1988. The conflict arises from the fact that the Department is defending itself against a civil suit brought by INSLAW while at the same time dealing with allegations of criminal conduct on the part of its own employees that would, if proven, destroy that very defense.

The manner in which the Department has up to now responded to the situation makes it apparent that defense of the civil suit has been given priority over the criminal investigation. Indeed, you yourself virtually acknowledged this the other day in your response to a question put to you by Judiciary Committee Chairman Jack Brooks. It is clear, in any case, that the Department is conducting an all-out, no-holds-barred defense of the civil suit while dragging its feet on the criminal investigation.

We are aware, of course, that some kind of an investigation has been conducted. Indeed, we have been told that it is now nearly finished. We also know, however, that the investigation cannot have been thorough or complete. This conclusion is compelled by the following facts:

(a) A thorough investigation would have had to seek information from William A. Hamilton, President of INSLAW. He not only knows far more about the INSLAW matter than anyone else, but the accuracy and retentiveness of his memory have been confirmed time and again by the discovery of documents and the corroborative testimony of others.*

(b) No one has talked to Mr. Work or me; after the Hamiltons, we are the next-best informed about the case. Despite our inevitable bias, both of us are experienced prosecutors and are quite capable of evaluating evidence and identifying leads that a conscientious investigation would have pursued.

(c) Had the Department conducted a thorough investigation, it would have interrogated many of the same individuals who have given us leads and information. To the best of our knowledge, only one of those individuals has heard from anyone representing the Department.

For reasons previously explained by Mr. Work to the Public Integrity Section and restated in several letters to Mr. Keeney, the findings of the Bankruptcy Court should in themselves have been sufficient to trigger a thorough investigation. Since then significant new information, some of it referred to in my memorandum to Mr. Ross, has confirmed and supplemented those findings. Among the most important and solidly-grounded leads that had by then been uncovered are the following:

(a) Early in 1981 Meese, Earl Brian, and Edwin Thomas, all close friends, converged on Washington. In subsequent months Meese allowed Brian to use a White House office; Thomas became an aide to Meese and borrowed $100,000 from Brian to buy a house; Mrs. Meese, with $15,000 loaned by Thomas, bought stock (later sold at a loss) in Biotech Capital Corporation, a Brian company, and stock (later sold at a profit) in American Cytogenetics, another Brian company.

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*In a phone conversation with Mr. Ross on October 11, 1988 I informed him that Charles R. Work, INSLAW's trial counsel, and I had advised Mr. Hamilton not to agree to an interview by OPR attorney Robert Lyons and assured Mr. Ross that INSLAW would be glad to cooperate with an unbiased investigation. A follow-up memorandum explaining the reasons for this advice reiterated INSLAW's readiness to cooperate.

(b) In the summer of 1981 INSLAW was seeking a contract to install PROMIS in the U.S. Attorneys' Offices. When it appeared probable that INSLAW would get the contract, the PROMIS project manager and contracting officer were removed and replaced by recruits from outside the Department, both of whom were found by the Bankruptcy Court to be biased against INSLAW.

(c) In June or July of 1983, a whistleblower warned Senator Baucus that Meese and Jensen were planning to award a "massive sweetheart contract" to their friends to install PROMIS in the Department as soon as Meese became Attorney General.

(d) In April, 1983, Hadron, Inc., a Biotech subsidiary, offered to purchase INSLAW. Hamilton told Dominick Laiti, Hadron's chairman, that he was not interested. Laiti said, "We have ways of making you sell." Hadron later received a $40 million contract from the Department.*

(e) On February 8, 1985, the day after INSLAW filed in bankruptcy, AT&T's counsel, a lawyer named Ken Rosen never previously employed by AT&T, launched an effort to push INSLAW into liquidation. Rosen's co-counsel was Shea & Gould, who were also Brian's counsel. There is evidence that Rosen was acting in collusion with the Executive Office for U.S. Trustees.

(f) The two versions of Cornelius Blackshear's testimony with regard to that Office's role cannot both be true. It has since been reported that Blackshear has recanted his recantation. The original Blackshear testimony is corroborated by Anthony Pasciuto, whom OPR attempted to get rid of, and several other witnesses. Blackshear explained his first recantation on the ground that he had confused INSLAW with UPI, another bankrupt company. Brian made a bid for UPI while it was in bankruptcy and later took it over.

(g) On May 23, 1986, the Department published a request for proposals (RFP) on a large office automation and case management system. Called "Project Eagle," this RFP is estimated to cost some $212 million, not counting expansion options. Project Eagle case management software is an essential component of any such system; it is a

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*Independent Counsel Jacob Stein had all the information in subparagraph (a) but not the information in this subparagraph.

function performed uniquely well by PROMIS. When first released, the RFP stated that the Department planned to develop new case management software once the Project Eagle computer hardware contract was awarded. The Department later amended the RFP in a manner indicative of a plan to install PROMIS. Although the Department at one point denied this implication, it ultimately admitted, in a pleading filed in the INSLAW litigation, that the added requirements were issued for the express purpose of making possible the use of PROMIS.

(h) Notwithstanding the seriousness of the allegations about D. Lowell Jensen made to Ronald A. LeGrand by a trusted source in the Department, LeGrand has declined to identify his informant because the latter is still afraid to come forward. The informant has not yet been given explicit assurance of protection against reprisal.

In the six months since my memorandum to Mr. Ross a substantial amount of additional information has come to light. Some is corroborative; some is merely suggestive. All of it calls for follow-up of a kind that INSLAW has not been able to pursue because, on motion of the government, it has been denied subpoena power and access to discovery proceedings pending the government's appeal from the Bankruptcy Court judgment. Here are some examples of this additional information:

(a) Jacob Stein was unable to find any of Meese's telephone logs for the entire period from April 22 to October 12, 1983 except for 10 days. That was the period of the Department's most strenuous efforts to gain control over the PROMIS software.

(b) Two former employees of Dickstein, Shapiro & Morin, Meese's counsel in the Stein investigation, have said that they shredded about 40 boxes of Meese-related documents.

(c) Brian and Laiti contacted two New York firms in September, 1983 to raise money for the purchase of criminal justice software; according to one source, PROMIS was the software being sought.

(d) In December, 1984, Daniel Tessler of 53rd Street Ventures, which had invested in INSLAW and was one of the companies contacted by Brian in September, 1983, demanded that the Hamiltons sign over to him the voting rights of their controlling interest in INSLAW common stock.

Tessler is a cousin of Alan Tessler, the Shea & Gould partner who handled M&A work for Brian.

(e) A source in the Department has said that a Jensen aide told her in 1984 that "Jensen was the main person behind the INSLAW problem" and that "his style was to operate using his subordinates."

(f) In October, 1985, Systems and Computer Technology, Inc. began an aggressive effort to take over INSLAW. According to a former SCT official, certain Departmental employees told SCT that the Department would welcome a hostile acquisition of INSLAW and quickly settle its contract disputes with INSLAW once Hamilton was removed.

The Bankruptcy Court's most important finding was that the effort to destroy INSLAW and take over its software was manipulated by the Department's contract manager, a discharged INSLAW employee whose vindictiveness would have been checked but for the ill-will of Jensen, the unsuccessful developer of competing software. The more recent information points to an even uglier scheme: friends of Meese were to get the Project Eagle contract and use PROMIS as its software component, having acquired PROMIS by whatever means they had to employ up to and including "trickery, fraud, and deceit."

Although the combination of the Bankruptcy Court findings and the later information illustrated above may not be sufficient to support an indictment, there can be no question that it meets the requirements of "specificity" and "credibility" as these terms are used in 28 U.S.C. § 591.* While adequate to implicate individuals of the rank with which § 591(b) is concerned, this combination is even more compelling in the context of § 591(c), the "catch-all" provision.** In this instance the conflict is between individuals within the Department of Justice who cannot help being pulled in opposite directions by competing personal and institutional loyalties. The history of the Department's handling of the matter makes this conflict glaringly obvious. The result has been a tenacious defense against civil claims with consequent neglect of serious charges of criminal conduct. It is all too

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*The legislative history makes this amply clear. See e.g., S. Rep. No. 496, 97th Cong., 2d Sess. 12-13 (1982) reprinted in 1982 U.S. Code Cong. & Admin. News 3548-49.

**See id. at 9, 1982 U.S. Code Cong. & Admin. News at 3545.

evident that the Department would rather win the civil case than uncover facts that might force it to confess error.

To date, the cost to INSLAW has been exceeded only by that to the public interest. The U.S. Attorneys' Offices have been deprived of the improvements in PROMIS they would otherwise have obtained. The introduction of much-needed modern management systems for departmental litigation has been inexcusably delayed. Worse still, substantial evidence of serious wrongdoing has not been followed up. Speaking as a lawyer who has spent most of his life in public service, I do not understand this perversion of priorities.

Bill Hamilton, Chuck Work, and I share a strong sense of loyalty to the Department of Justice. We care about the integrity of its conduct. We may be wrong in believing that this has been compromised, but if so we're entitled to find that out through a process that is not flawed by a built-in conflict of interest. The only solution, as we have long insisted, is the appointment of independent counsel pursuant to the statute. In the light of the foregoing, I am confident that you will recognize the force of this contention.

Very truly yours,

Elliot L. Richardson

cc: William A. Hamilton
John C. Keeney
James C. McKay
Robert S. Ross
Charles R. Work

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

INSLAW, INC.,	:	
Petitioner,	:	
- against -	:	89 Civ. ____
DICK THORNBURGH, as Attorney General of the United States, and UNITED STATES DEPARTMENT OF JUSTICE,	:	
Respondents.	:	

MEMORANDUM OF LAW IN SUPPORT OF INSLAW'S PETITION FOR A WRIT OF MANDAMUS

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DISTRICT OF COLUMBIA

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DICK THORNBURGH, as Attorney General of the United States, and UNITED STATES DEPARTMENT OF JUSTICE, Respondents.	:	

MEMORANDUM OF LAW IN SUPPORT
OF INSLAW'S PETITION FOR A WRIT OF MANDAMUS

Petitioner, INSLAW, Inc. ("INSLAW"), respectfully submits this memorandum in support of its petition, pursuant to 28 U.S.C. § 1361, dated December 22, 1989, for a writ of mandamus directing respondents, Attorney General Dick Thornburgh and the United States Department of Justice (the "Department"), to conduct a fair and thorough investigation of the matters alleged in the petition and its attachments and to assign responsibility for that investigation to individuals who have had no previous involvement with those matters.

STATEMENT OF THE FACTS AND THE NATURE OF THE CASE

INSLAW is a case-management software company founded and managed by William A. Hamilton and his wife Nancy. In an action brought in the United States Bankruptcy Court for the District of Columbia, INSLAW charged the Department with unlawfully attempting to destroy INSLAW and take over its case management software. In that action, the Court found that Department officials "took, converted, stole" INSLAW's software through "trickery, fraud, and deceit." Inslaw, Inc. v. United States, Ch. 11 Case No. 85-00070, Adv. No. 86-0069, slip op. at 9 (Bankr. D.D.C. Sept. 28, 1987). After subsequent hearings, the Court awarded INSLAW $6.8 million in damages. Inslaw, Inc. v. United States, Ch. 11 Case No. 85-00070, Adv. No. 86-0069, slip op. at 9 (Bankr. D.D.C. Feb. 1, 1988).

The Department appealed to this Court. This Court affirmed the Bankruptcy Court judgments, noting:

> It is sufficient to state that after careful review of all of the volumes of transcripts of the hearings before the bankruptcy court, the more than 1,200 pages of briefs and supporting appendices and all other relevant documents in the record, there is convincing, perhaps compelling support for the findings set forth by the bankruptcy court.

United States v. Inslaw, Inc., Ch. 11 Case No. 85-00070, Adv. No. 86-0069, slip op. at 37 (D.D.C. Nov. 22, 1989). The Court added that even the undisputed facts compelled it to draw "the same conclusion reached by the bankruptcy court; the government acted

willfully and fraudulently to obtain property that it was not entitled to under the contract." Id. at 40.

The Bankruptcy Court found that the Department's attempt to destroy INSLAW was manipulated by the Department's contract manager, a discharged INSLAW employee whose vindictiveness should have been curbed by his superiors. Later-discovered information points to an even uglier scheme in which friends of the then Attorney General sought to take advantage of their relationship with him in order to obtain a lucrative contract for the automation of the Department's litigating activities. INSLAW's case-management software was essential to this scheme, and to acquire it the conspirators resorted to unscrupulous means, up to and including "trickery, fraud, and deceit." Inslaw, Inc. v. United States, slip op. at 9 (decided Sept. 28, 1987). INSLAW submitted evidence of this scheme to the Department in February, 1988 and supplied corroborative information, much of it obtained from present and former Department employees, in May, 1989.

The Bankruptcy Court findings should in themselves have spurred the Department to take swift corrective action. It was foreseeable, however, that this would not only expose widely ramified criminal conduct on the part of Departmental employees but also make the Department liable for punitive and consequential damages much larger than the $6.8 million already awarded. The less the Department knew of the facts, the more easily it could rationalize the nonperformance of duty and minimize these risks. The Department could not completely duck an investigation, but it

might get away with a superficial one. Taking that chance, the Public Integrity Section of the Criminal Division initiated a cursory review of INSLAW's charges but made no serious attempt to determine their validity.

Respondents have a duty both to enforce the criminal laws and to be fair to civil litigants. It is scarcely conceivable that they will challenge this proposition. In opposing INSLAW's petition, they will thus be forced to argue that when the Public Integrity Section closed its so-called "investigation," the Section was acting within the scope of its discretion. This argument can be supported only on one of two grounds: either (1) that the facts alleged in INSLAW's petition are not true or (2) that these facts do not add up to a showing of wrongdoing sufficient to compel a thorough investigation. Neither contention is sustainable.

Respondents would be in a position to challenge the truth of INSLAW's allegations only if they had investigated them. At the very heart of INSLAW's petition, however, is the allegation that the Department has not made a serious effort to find out whether or not INSLAW's factual allegations are true. Corroborated as these allegations are by the testimony of the Department's own present and former employees, they will be difficult to overcome. For respondents to contend, on the other hand, that INSLAW's factual allegations are insufficient on their face to portray an abuse of discretion would trivialize both the Bankruptcy Court's findings of serious wrongdoing, which this

Court has affirmed, and the even more sinister malfeasance adumbrated by this petition and its attachments.

Being unable either to discredit INSLAW's allegations or to diminish their impact, the Department may then fall back on the assertion that the adequacy of its investigations, whether for the purpose of criminal prosecution or of civil litigation, is unreviewable as a matter of law. But that, as we shall point out below, is a position that has no support in the relevant cases.

The petition and its attachments lay out in detail the shortcomings of the Department's purported investigation. If the Department had done no more than match INSLAW's own investigative effort, it would have pursued the same leads that INSLAW pursued, identified the same individuals whom INSLAW interviewed, and obtained the same information that INSLAW obtained. The Department did not do any of these things. On the contrary, it wound up a superficial inquiry without contacting more than one of INSLAW's key witnesses, without following up any of the leads furnished to it by INSLAW, and without attempting to obtain the most obviously relevant documents and correspondence. Given these gross deficiencies, respondents cannot plausibly claim that they fulfilled either their duty to enforce the criminal laws or their duty of fairness in the conduct of civil litigation.

INSLAW does not contend that the facts it has assembled are sufficient to prove a criminal conspiracy. It does contend, however, that these facts, coupled with the Bankruptcy Court's findings, create an imperative need for a thorough, hardhitting,

and impartial investigation. Despite a great deal of time and expense devoted to developing a full explanation of the Department's malfeasance, INSLAW has not been able to pursue all the indicated leads, talk to all the available witnesses, or examine all the relevant documents. And even after the restraining order that prevented INSLAW from conducting discovery proceedings has been lifted, INSLAW still will not have means of obtaining critically important testimony anywhere near comparable to those at the command of the Department.

Against this background, the Department's statement of July 18, 1989 that its investigation had been terminated "due to lack of evidence of criminality" cannot be accepted at face value. The termination is better explained on the basis that the Department felt trapped by a conflict of interest. At the time of the statement the Civil Division was resisting INSLAW's claims on grounds which, had they been thoroughly investigated by the Criminal Division, might well have been found to be lacking in merit. The Department's duty to investigate the charges of a criminal conspiracy involving its own employees clashed with its interest in minimizing or defeating the civil damage claims against the Department. The Bankruptcy Court's findings and INSLAW's allegations impugned the Department's integrity. They implicated senior colleagues of the investigators themselves. Departmental pride was at stake. Rather than face the facts, it was easier to look for rationalizations such as `the evidence did not add up to the conclusive proof of crime,' `everybody does

favors for political friends,' or `the Hamilto[redacted] are suffering from a persecution complex.' As the Bankruptcy Court observed, respondents' reaction was "to circle the wagons." In re Inslaw, Inc., Ch. 11 Case No. 85-00070, Adv. No. 86-0069, slip op. at 1038 (Bankr. D.D.C. June 12, 1987).

Briefly stated, these are the circumstances under which INSLAW seeks from this Court a writ of mandamus directing respondents to conduct a fair and thorough investigation into the facts underlying the allegations contained in its petition and the attachments thereto. The legal basis for this request is set forth in the remainder of this memorandum.

ARGUMENT

I

MANDAMUS IS THE APPROPRIATE REMEDY

United States district courts have original jurisdiction of any action in the nature of mandamus to compel officers or employees of the United States or any agency of the United States to perform a duty owed to a plaintiff. 28 U.S.C. § 1361 (1982). The remedy of mandamus is available if (1) plaintiff has a clear right to relief, (2) defendant has a clear duty to act, and (3) there is no other remedy available to plaintiff. Homewood Professional Care Center, Ltd. v. Heckler, 764 F.2d 1242, 1251 (7th Cir. 1985); Maier v. Orr, 754 F.2d 973, 983 (Fed. Cir.), reh'g denied, 758 F.2d 1578 (Fed. Cir. 1985); Ganem v. Heckler, 746 F.2d 844, 852 (D.C. Cir. 1984); Piledrivers' Local Union No. 2375 v. Smith, 695 F.2d 390, 392 (9th Cir. 1982); Carter v. Seamans, 411 F.2d 767, 776 (5th Cir. 1969), cert. denied, 397 U.S. 941 (1970). See also Allied Chem. Corp. v. Daiflon, Inc., 449 U.S. 33, 34 (1980).

To justify a court order compelling an officer or agency of the executive branch to perform a duty, it must be clear that the non-performance of the duty cannot be defended as falling within the legitimate discretion of the officer or agency. Mandamus is the indicated remedy, therefore, where "[f]ederal officials are acting contrary to law, abusing their discretion and acting outside the limits of their permissible discretion . . . ." NAACP v. Levi, 418 F. Supp. 1109, 1117 (D.D.C. 1976). That was a

case in which plaintiffs alleged, as we allege that the Department of Justice had abused its discretion by conducting an investigation that was "superficial, less than thorough and meaningless." Id. at 1113. The government's motion to dismiss the complaint was denied.

Respondents' failure in the present case to perform legally mandated duties provides at least as compelling a justification for judicial intervention as the instances of nonperformance typically redressed by mandamus. E.g., Roaring Springs Assocs. v. Andrus, 471 F. Supp. 522 (D. Or. 1978) (on petition of private landowners, Secretary of Interior ordered to remove free-roaming horses from landowner's property); Caswell v. Califano, 435 F. Supp. 127 (D. Me. 1977), aff'd, 583 F.2d 9 (1st Cir. 1978) (on petition of affected beneficiaries, Secretary of Health, Education, and Welfare ordered to end delays in scheduling administrative hearings on eligibility for disability benefits); McNutt v. Hills, 426 F. Supp. 990 (D.D.C. 1977) (upon proof of blind employee's claim, mandamus would be appropriate to compel Secretary of Housing and Urban Development to meet affirmative obligations to combat discrimination against mentally handicapped). In every case the controlling question is whether the official action or failure to act, as the case may be, is so lacking in any tenable justification as to be impossible to characterize as a defensible performance of duty.

Since performance of the duty to be fair and to enforce the criminal law is an executive branch function, the judiciary is

generally reluctant, and properly so, to grant relief to private litigants who directly challenge prosecutorial discretion. For a court to substitute its own judgment for that of the Department of Justice on the question of whether or not an individual should be prosecuted would self-evidently encroach upon the separation of powers provided for in Article II, Section 3 of the Constitution. Newman v. United States, 382 F.2d 479, 481 (D.C. Cir. 1967); United States v. Cox, 342 F.2d 167, 171 (5th Cir.), cert. denied, 381 U.S. 935 (1965). See Fund for Constitutional Gov't v. National Archives & Records Serv., 656 F.2d 856, 863 (D.C. Cir. 1981).

Drawing on these generalizations, respondents may argue that for this Court to order them to conduct a fair and impartial investigation will usurp their "prosecutorial discretion." There can be no such usurpation, however, where the failure to perform a prosecutorial duty is the consequence not of legitimate discretion, but of discrimination, conflict of interest, obstruction of justice, or sheer neglect. In those situations the court order -- far from usurping an executive function -- merely requires the function to be carried out. See NAACP v. Levi, 418 F. Supp. at 1116. As the Court of Appeals for this Circuit has observed, "the decisions of this court have never allowed the phrase 'prosecutorial discretion' to be treated as a magical incantation which automatically provides a shield for arbitrariness." Medical Comm. for Human Rights v. SEC, 432 F.2d 659, 673 (D.C. Cir. 1970), vacated as moot, 404 U.S. 403 (1972). See Perkins v. Elg, 307

U.S. 325, 349-50 (19[redacted]).

The distinction between the executive branch's duty to prosecute and the judicial branch's power to enforce observance of that duty was sharply delineated in Nader v. Saxbe, 497 F.2d 676 (D.C. Cir. 1974). Plaintiffs there sought a writ of mandamus to compel the Attorney General of the United States and the United States Attorney for the District of Columbia to initiate criminal prosecutions against alleged violators of the Federal Corrupt Practices Act. Although finding that the plaintiffs lacked standing, the Court of Appeals took issue with the District Court's conclusion that prosecutorial decision-making is wholly immune from judicial review and pointed out that mandamus is the appropriate remedy where "no legitimate consideration informed the prosecutor's decision not to prosecute the individual in question." Id. at 679 n.18.

No legitimate consideration informed respondents' decision not to investigate INSLAW's allegations. Accordingly, a writ of mandamus is the appropriate means of compelling respondents to fulfill the duties and responsibilities incumbent upon them as a matter of law.

II

INSLAW HAS A CLEAR RIGHT TO RELIEF

INSLAW's civil claims against the Department of Justice rest on the same evidence that points to the existence of a criminal conspiracy to destroy INSLAW and take over its software. The Department has defended itself against INSLAW's claims with

extraordinary zeal and tenacity. It continues to do so without ever having conducted an investigation of INSLAW's allegations sufficient to enable it to make a fair assessment of the merits of those claims, and thus to evaluate the extent of its potential liability to INSLAW.

As the next section of this memorandum makes clear, the Department had -- and still has -- a duty to conduct such an investigation. Insofar as it is a duty compelled by the obligation to be fair in the conduct of civil litigation, it is a duty owed to petitioner. Petitioner has been harmed by the Department's failure to fulfill this duty. INSLAW therefore has a clear right to relief, and thus satisfies the first requirement of entitlement to mandamus. See cases cited supra at 8-9.

The Department's neglect of its duty of fairness has harmed and continues to harm INSLAW in three clearly demonstrable ways: (1) it has forced INSLAW to expend substantial amounts of money and other corporate resources litigating its civil claims against the Department; (2) it has caused INSLAW to lose important business opportunities by delaying the vindication of INSLAW's performance under its contract with the Department; and (3) it has forced INSLAW to devote a vast amount of time, money, and energy to investigative efforts which the Department itself should have conducted and to which the Department could have brought far more adequate investigative resources. Indeed, the present situation entails a right to relief at least as compelling as those deemed sufficient in other cases involving a government agency's respon-

sibility toward a plaintiff's access to information. Cf. Ganem v. Heckler, 746 F.2d at 852-54 (on petition of non-resident Iranian, Secretary of Health and Human Services ordered to determine content of Iranian law for purposes of awarding Social Security benefits); American Friends Serv. Comm. v. Webster, 485 F. Supp. 222, 227 (D.D.C. 1980), aff'd in part and rev'd in part, 720 F.2d 29 (D.C. Cir. 1983) (FBI enjoined from destroying documents that might be relevant to plaintiffs' claims).

INSLAW's right to relief is reinforced by the criteria normally applied to standing in general. A party has standing if it alleges "personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." Allen v. Wright, 468 U.S. 737, 751, reh'g denied, 468 U.S. 1250 (1984). The economic harm suffered by INSLAW is itself sufficient to satisfy this requirement, as it "is beyond cavil that the deprivation of one's property is a sufficient injury to satisfy the injury in fact requirement." Cardenas v. Smith, 733 F.2d 909, 913 (D.C. Cir. 1984).

III

RESPONDENTS HAVE A CLEAR DUTY TO ACT

Article II, Section 3 of the Constitution directs the President to "take care that the Laws be faithfully executed." Although the statutes creating the position of Attorney General and making him head of the Department of Justice (28 U.S.C. §§ 503, 509) do not spell out his responsibilities, it has been

authoritatively declared that the Attorney General is "the hand of the President in taking care that the laws of the United States in protection of the interests of the United States in legal proceedings and in the prosecution of offences [sic], be faithfully executed." Ponzi v. Fessenden, 258 U.S. 254, 262 (1922). See also United States v. Cox, 342 F.2d at 171. The Court in Ponzi traced the Attorney General's responsibility for the execution of laws to such venerable cases as Kern River Co. v. United States, 257 U.S. 147 (1921); In re Neagle, 135 U.S. 1 (1890); and United States v. San Jacinto Tin Co., 125 U.S. 273 (1888). This responsibility has been delegated to him by the President pursuant to the latter's "authority to commission all the officers of the United States, and, by and with the advice and consent of the Senate, to appoint the most important of them and to fill vacancies." In re Neagle, 135 U.S. at 63.

The judicial precedents thus supply formal support for the universal assumption that it is respondents' duty to enforce the criminal laws of the United States and to represent the United States in civil litigation. This clear duty to act fulfills the second requirement of petitioner's entitlement to mandamus.

A. Respondents' Duty to Conduct Civil Litigation Embraces a Duty to Be Fair

Respondent's duty to see to it that the laws are faithfully executed carries with it a special obligation toward maintaining public confidence in the fairness of the administration of justice. In the words of the Supreme Court:

> Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly. An inscription on the walls of the Department of Justice states the proposition candidly for the federal domain: "The United States wins its point whenever justice is done its citizens in the courts."

Brady v. Maryland, 373 U.S. 83, 87 (1963). The quoted inscription is as true, of course, for civil litigation as for criminal proceedings: both belong to "the federal domain."

Courts have long looked to Department of Justice officials for exemplary conduct as agents of the government. See Owen v. City of Independence, 445 U.S. 622, 651, reh'g denied, 446 U.S. 993 (1980); Olmstead v. United States, 277 U.S. 438, 485 (1928) (Brandeis, J., dissenting), overruled, Katz v. United States, 389 U.S. 347 (1967). The public has a right to expect conscientious service from government counsel. Meza v. Washington State Dep't of Social & Health Servs., 683 F.2d 314, 315 (9th Cir. 1982) (district court held to abuse its discretion by excusing neglect of State Assistant Attorney General).

In the case of criminal proceedings, federal courts can enforce the duty to be fair by ordering a new trial. E.g., Berger v. United States, 295 U.S. 78, 88 (1935) (unfair cross-examination of witnesses and unfair argument); King v. United States, 372 F.2d 383, 396 (D.C. Cir. 1966) (unfair cross-examination); Griffin v. United States, 183 F.2d 990, 993 (D.C. Cir. 1950) (failure to disclose evidence useful to defense). See also Young v. United States ex rel. Vuitton, 481 U.S. 787 (1987);

Campbell v. Marshall, 769 F.2d 314 (6th Cir. 1985), cert. denied, 475 U.S. 1048 (1986). In civil proceedings, mandamus can effectively serve the same end. See cases cited supra at 8-9.

Respondents' duty of fairness in the conduct of a lawsuit is more exacting than that expected of an ordinary litigant. Indeed, observance of this special degree of responsibility is expressly commanded by the Department of Justice Standards of Conduct. All Department of Justice employees are directed to "[c]onduct themselves in a manner that creates and maintains respect for the Department of Justice and the U.S. Government. In all their activities, personal and official, they should always be mindful of the high standards of behavior expected of them . . . ." Department of Justice Standards of Conduct, 28 C.F.R. § 45.735-2(a) (1988). Attorneys are also instructed to be guided in their conduct by the Code of Professional Responsibility of the American Bar Association. Id. § 45.735-1(b). The Code specifically speaks to the standard of fairness to be expected of government lawyers:

> A government lawyer who has discretionary power relative to litigation should refrain from instituting or continuing litigation that is obviously unfair. A government lawyer not having such discretionary power who believes there is lack of merit in a controversy submitted to him should so advise his superiors and recommend the avoidance of unfair litigation. A government lawyer in a civil action or administrative proceeding has the responsibility to seek justice and to develop a full and fair record, and he should not use his position or the economic power of the government to harass parties or to bring about unjust settlements or results.

Code EC 7-14 (1989).

Respondents have "discretionary power relative to" the INSLAW litigation. Their responsibility to develop "a full and fair record" applies to the pretrial as well as to the trial stage of the litigation. Having failed to fulfill this responsibility, they are "continuing litigation that is obviously unfair." The Code of Professional Responsibility requires, therefore, that respondents make a serious effort to find out whether or not INSLAW's allegations are true, and this requirement is reinforced by the fact that respondents are in a far better position than INSLAW to do so. The unfairness that has resulted from the neglect of this responsibility is compounded by the continuing harm thereby imposed on INSLAW.

Given respondents' persistent refusal to take the action demanded by the duty of fairness, mandamus is the only practical means of redress.

B. Respondents' Duty to Enforce the Criminal Laws Embraces the Duty to Investigate

Referring to United States Attorneys, the Supreme Court has laid down standards that apply to all Federal prosecutors:

> The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer.

Berger v. United States, 295 U.S. at 88 (emphasis added). See also Young v. United States ex rel. Vuitton, 481 U.S. at 803; Marshall v. Jerrico, Inc., 446 U.S. 238, 249 (1980).

In order to see to it that "guilt shall not escape," respondents are obliged, whenever they initiate an investigation of wrongdoing, to pursue the evidence as far as may be necessary to make a proper determination as to the course of action thereby indicated. As this Court has said, a prosecutor "has an affirmative responsibility to investigate prudently suspected illegal activity when it is not adequately pursued by other agencies." NAACP v. Levi, 418 F. Supp. at 1115 (citing A.B.A. Standards Relating to the Administration of Criminal Justice, The Prosecution Function, Part III (1974)).

Of course, respondents' duty to enforce the criminal laws is not a duty owed to INSLAW in the same degree that they owe INSLAW a duty of fairness in defending the United States against INSLAW's claims. That is a consideration, however, that bears only on the question of INSLAW's standing to seek mandamus, not on the question of the appropriateness of mandamus as a means of compelling respondents to carry out their duty to enforce the criminal laws through a proper investigation of INSLAW's allegations. Given INSLAW's standing in this Court to seek relief from respondents' unfairness in the civil litigation, the issue of their failure to enforce the criminal laws is also before the Court. Cf. Nader, supra, cited at 11; Levi, supra, cited at 8-9. If, therefore, this Court finds that they have been derelict in

this duty, it can properly order them to carry it out.

Respondents' duty to pursue the evidence in the matter of INSLAW has three separate components. The first consists in their obligation to decide upon the appropriate course of action. The Bankruptcy Court for this District found that "the Department of Justice took, converted, stole, INSLAW's enhanced PROMIS by trickery, fraud, and deceit . . . ." Inslaw, Inc. v. United States, slip op. at 9 (decided Sept. 28, 1987). This Court has affirmed that finding. United States v. Inslaw, Inc., slip op. at 44. INSLAW has adduced additional evidence of criminal conduct on the part of Department officials. These facts thrust upon respondents a duty to put aside concerns of institutional self-interest and follow the evidence wherever it may lead. Until and unless they do that, they cannot properly determine what action is necessary.

The second component derives from respondents' possession of a unique array of investigatory powers and resources. Respondents can, and INSLAW cannot, authorize electronic surveillance, initiate undercover operations, compel immunized testimony, rely on unsympathetic informants and accomplice witnesses, and call upon a grand jury's investigative powers. A Senate subcommittee which looked into the INSLAW situation learned that there were a number of DOJ employees "who desired to speak to the Subcommittee, but who chose not to out of fear for their jobs." Senate Comm. on Gov'tal Affairs, 101st Cong., 1st Sess., Allegations Pertaining to the Dep't of Justice's Handling of a

Contract With INSLAW, Inc. 58 at 46 (Comm. Pri[redacted]1989). Only the Attorney General can assure these employees that their testimony will not bring reprisal. Moreover, the Department has under its direction trained and experienced investigators who have not been compromised by previous involvement in the INSLAW case. Possession of these powers and resources creates responsibility for their prudent but vigorous use.

The third component is a consequence of the impairment of INSLAW's ability to find the facts for itself which resulted from a court order denying it access to subpoena power and discovery proceedings for the 20-month period during which respondents' appeal from the Bankruptcy Court judgment was pending. The fact that respondents deliberately sought this blocking device augments their affirmative responsibility.

IV

INSLAW HAS NO OTHER ADEQUATE REMEDY

INSLAW has pursued, unsuccessfully, all the available administrative means of inducing the Department of Justice to perform its duty to conduct a fair and thorough investigation. INSLAW requested that the Attorney General appoint an Independent Counsel pursuant to the Ethics in Government Act. Respondents denied this request on May 4, 1988. INSLAW later asked the Special Division of the United States Court of Appeals for this Circuit, which is responsible for appointing Independent Counsels, to review this denial, but the Special Division found lack of

jurisdiction. In r[redacted]INSLAW, Inc., Div. No. 89[redacted] (D.C. Cir. Sept. 8, 1989). Taking it for granted that the Department would conduct a bona fide investigation into the matter, INSLAW came forward with relevant information. Some of this information was submitted to the Public Integrity Section by the Hamiltons in February, 1988, and additional information was given to the Attorney General in May, 1989. The Department has ignored the leads supplied by INSLAW.

After the Public Integrity Section concluded its "investigation," it declined prosecution and closed the matter on July 18, 1989. INSLAW's counsel wrote the Department on August 10, 1989 complaining that this investigation had not been conducted in a thorough and impartial manner. The Department refused to reopen the matter.

Where, as a result of the exhaustion of administrative remedies, mandamus has become the only remaining source of relief, it is the appropriate remedy. See Ganem v. Heckler, 746 F.2d at 852-53; City of New York v. Heckler, 578 F. Supp. 1109, 1119 (E.D.N.Y.), aff'd, 742 F.2d 729 (2d Cir. 1984), reh'g denied, 755 F.2d 31 (2d Cir.), cert. granted, 474 U.S. 815 (1985), aff'd sub nom. Bowen v. City of New York, 476 U.S. 467 (1986); Caswell v. Califano, 435 F. Supp. at 132.

INSLAW has exhausted all available administrative remedies. It has no remaining source of relief. INSLAW has therefore satisfied the third and final requirement of entitlement to mandamus. See cases cited supra at 8.

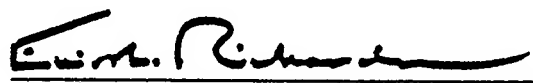
Conclusion

For all the foregoing reasons, this Court should issue a writ of mandamus compelling respondents to conduct a fair and thorough investigation of the matters alleged by INSLAW in accordance with the conditions proposed in petitioner's prayers for relief.

Dated: Washington, D.C.
December 20, 1989

Respectfully submitted,

MILBANK, TWEED, HADLEY & McCLOY

By: 

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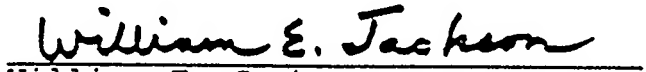

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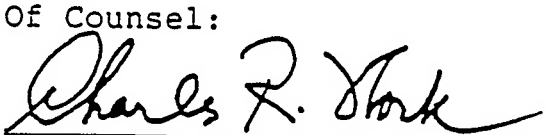

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